United States Circuit Court of Appeals

FOR THE SIXTH CIRCUIT.

No. 964.

GENERAL EXCAVATOR COMPANY,
Appellant,

vs.

KEYSTONE DRILLER COMPANY,
Appellee.

KEYSTONE DRILLER COMPANY,
Cross-Appellant,

vs.

GENERAL EXCAVATOR COMPANY,
Cross-Appellee.

No. 965.

THE OSGOOD COMPANY,
Appellant,

vs.

KEYSTONE DRILLER COMPANY,
Appellee.

KEYSTONE DRILLER COMPANY,
Cross-Appellant,

vs.

THE OSGOOD COMPANY,
Cross-Appellee.

APPEALS FROM THE UNITED STATES DISTRICT COURT,
FOR THE NORTHERN DISTRICT OF OHIO,
WESTERN DIVISION.

TRANSCRIPT OF RECORD
VOLUME IV
DEFENDANTS' EXHIBITS (Concluded)

NAMES AND ADDRESSES OF COUNSEL
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DEFENDANT'S EXHIBIT NO. 62(63)

Book of Patents

U. S. Patent No. 1,056,268, Mar. 18, 1913,

To J. G. Fairbanks

Excavating Apparatus

(Filed May 16, 1931)

[Cases Nos. 964 and 965]

PRINTER'S NOTE:

This patent having been reproduced hereinbefore as Defendant's Exhibit No. 29, the same is omitted at this point to avoid duplication. (See Page 225 of Exhibits, Vol. III.)

DEFENDANT'S EXHIBIT NO. 62(70)

Book of Patents

U. S. Patent No. 1,107,899, Aug. 18, 1914,

To L. P. Clutter

Excavator

(Filed May 16, 1931)

[Cases Nos. 964 and 965]

PRINTER'S NOTE:

This patent having been reproduced hereinbefore as Defendant's Exhibit No. 25, the same is omitted at this point to avoid duplication. (See Page 203 of Exhibits, Vol. III.)

DEFENDANT'S EXHIBIT NO. 62(72)

Book of Patents

U. S. Patent No. 1,194,204, Aug. 8, 1916,

To D. H. Mahoney

Ditching Machine

(Filed May 16, 1931)

[Cases Nos. 964 and 965]

PRINTER'S NOTE:

This patent having been reproduced hereinbefore as Defendant's Exhibit 3, the same is omitted at this point to avoid duplication. (See Page 185 of Exhibits, Vol. III.)

DEFENDANT'S EXHIBIT NO. 62(81)

Book of Patents

U. S. Patent No. 1,249,805, Dec. 11, 1917,

To G. A. Morison, S. R. W. M. Hager & O. F. Kaeser

Dipper

(Filed May 16, 1931)

[Cases Nos. 964 and 965]

PRINTER'S NOTE:

This patent having been introduced in evidence as Defendant's Exhibit No. 80 and also as Defendant's Exhibit No. 115, and having been reproduced hereinafter as Defendant's Exhibit No. 80, the same is omitted at this point to avoid duplication. (See Page 1291 of Exhibits, Vol. IV.)

DEFENDANT'S EXHIBIT NO. 62(90)

Book of Patents

U. S. Patent No. 1,317,431, Sep. 30, 1919,

To LeRoy P. Clutter

Ditching or Excavating Machine

(Filed May 16, 1931)

[Cases Nos. 964 and 965]

PRINTER'S NOTE:

This patent having been introduced in evidence as Plaintiff's Exhibit No. P-1, and also as Defendant's Exhibit No. 24, and having been reproduced hereinbefore as Plaintiff's Exhibit No. P-1, the same is omitted at this point to avoid duplication. (See Page 91 of Exhibits, Vol. III.)

DEFENDANT'S EXHIBIT NO. 62(105)

Book of Patents

U. S. Patent No. 1,511,114, Oct. 7, 1924,

To R. R. Downie

Excavating Machine

(Filed May 16, 1931)

[Cases Nos. 964 and 965]

PRINTER'S NOTE:

This patent having been reproduced hereinbefore as Plaintiff's Exhibit No. P-2, the same is omitted at this point to avoid duplication. (See Page 97 of Exhibits, Vol. III.)

DEFENDANT'S EXHIBIT NO. 62(108)

Book of Patents

U. S. Patent No. 1,543,250, Jun. 23, 1925,

To R. R. Downie

Excavating Machine

(Filed May 16, 1931)

[Cases Nos. 964 and 965]

PRINTER'S NOTE:

This patent having been reproduced hereinbefore as Plaintiff's Exhibit No. P 3, the same is omitted at this point to avoid duplication. (See Page 109 of Exhibits, Vol. III.)

DEFENDANT'S EXHIBIT NO. 62(117)

Book of Patents

U. S. Patent No. 1,709,466, April 16, 1929,

To R. R. Downie

Ditcher Scoop Assembly

(Filed May 16, 1931)

[Cases Nos. 964 and 965]

PRINTER'S NOTE:

This patent having been reproduced hereinbefore as Plaintiff's Exhibit No. P-4, the same is omitted at this point to avoid duplication. (See page 119 of Exhibits, Vol. III.)

DEFENDANT'S EXHIBIT NO. 62(118)

Book of Patents

U. S. Patent No. 1,716,432, June 11, 1929,

To R. R. Downie.

Excavating Scoop

(Filed May 16, 1931)

[Cases Nos. 964 and 965]

PRINTER'S NOTE:

This patent having been reproduced hereinbefore as Plaintiff's Exhibit No. P-5, the same is omitted at this point to avoid duplication. (See Page 129 of Exhibits, Vol. III.)

Specification. A.D. 1882.—N° 655. 1255

D'Alton's Improvements in Machinery for Excavating, &c.

SPECIFICATION in pursuance of the conditions of the Letters Patent filed by the said Patrick Walter D'Alton in the Great Seal Patent Office on the 10th August 1882.

PATRICK WALTER D'ALTON of Fenchurch Street in the City of London Mechanical Engineer "IMPROVEMENTS IN MACHINERY FOR EXCAVATING AND CUTTING INTO EARTHY AND STONY MATERIALS."

According to this Invention and instead of toothed gearing and chains hitherto usually employed I employ direct acting cylinders and pistons for effecting the various motions required in machines for excavating and I impart motion to such pistons by fluid under pressure such as steam water or compressed air. These pistons are by lever connections and by an upright swinging post or pillar frame made to actuate the scoop or other excavating or cutting tool or tools so that the latter may at the operator's will receive a forward digging or cutting motion and if desired in a more or less upward or downward direction, a receding motion to get clear of the face of the material operated on, a swinging motion round the upright post, and in some cases a partially rotating motion. The aforesaid power cylinder pistons are by preference actuated by water exposed to steam pressure and contained in vessels.

And in order that this my Invention may be fully understood and readily carried into effect I will describe one arrangement with reference to the accompanying Drawings of which Figure 1 is a side elevation, Figure 2 an end elevation and Figure 3 a plan and Figures 4 and 5 are detail views in end elevation and longitudinal vertical section respectively of a part of the rotating pillar D Figure 6 is a horizontal section of same on line A B of Figure 5. Figures 7 and 8 are respectively end elevation and vertical longitudinal section shewing in detail a different arrangement or modification of the arrangement of joint and gland for pipes passing through upright pillar D. Figure 9 is a side view and Fig. 10 a plan of gear for rotating the pillar D.

The machine is arranged on a strong wrought iron bed frame A, which is supported on four wheels A^1 these latter run on rails. The frame A carries at one end an upright steam boiler B with donkey engine B^1 or other boiler feeder. The bed frame A carries near its other end a crane like post C also made of wrought iron and forming the upper bearing C^1 for the wrought iron upright pillar frame D this latter is at top and bottom fitted with pivots D^1 and D^2 respectively, so that it can rotate around its axis. To the frame D near the lower end is connected a second frame E which I call the lever frame and which can swing up and down round a pivot or gudgeon E^2, the lever frame E is doubled or consists of two side pieces which are united by intermediate diagonal bracing connecting pieces.

To the top of the lever frame E is jointed a third frame F which I call the scoop frame or arm which is made double consisting of two sides each having three parts or members forming a triangle and with a strut piece between the base and the apex. To the lower end of the scoop frame F is fixed an excavating scoop F^1 (or it might be some other digging or cutting tool); the scoop is in this case shown as provided with a lower central pick F^2 and two lateral picks F^3; it has also the usual lever gear for detaching and opening the bottom F^4 when the contents of the scoop are to be discharged.

The Drawing shews the manner in which the parts of the scoop frame F are rivetted together. The scoop F^1 is united to the scoop frame F by means of a joint bolt F^5 and in order that the position or inclination of the scoop F^1 or picks F^2, F^3 may be adjusted as the work requires it the scoop is also united to a gudgeon G^2

on the scoop frame F by means of two links G G that connect on to gudgeons G^1 on the scoop and are made adjustable in length by means of the right and left handed running sockets or nuts G^2.

Near the bottom end of the pillar frame D (in fact as here shewn in the line of the axis of the gudgeon E^1 on which the lever frame E swings) are bearings which carry the trunnions of an oscillating cylinder H containing a piston, the outer end of its piston rod H^1 is jointed to the scoop arm F by means of the gudgeon H^2 at some point between the pivot E^2 at the top of it and the scoop F^1 at the bottom of it. H^3 is a helical spring connecting the cylinder H to the lever frame E for the purpose of exerting an upward pull on the cylinder H so as to relieve the piston rod from the weight of the cylinder.

To some point on the pillar frame D I fit a second cylinder I (see Figures 1, 4 and 5) the piston rod I^1 of which by means of crosshead I^2 and two chains I^3 passing over guide pulleys I^4 is connected to the upper end of the lever frame E, this latter is also by a guy chain I^5 secured to the pillar frame D.

Close to the steam boiler B I place two vessels K K^1 which are steam tight, these vessels are by means of the breeches pipe L connected to a common pipe L^1 from the steam space of the boiler, steam is admitted from the boiler B to the pipes L^1 and L and cylinders K K^1 by the stop valve L^2. On the top of each vessel K K^1 there is a slide valve M, which by means of levers M^1 and M^2 respectively admits of letting the steam into the vessels K or K^1 and of letting this steam escape into exhaust pipes M^3 and M^4. The vessels K K^1 are charged with water or other suitable liquid by means of pipes N from a water tank N^1. The

water or other suitable liquid by means of pipes N from a water tank N^1. The vessel K^1 communicates with the cylinder H by means of the pipe O, Figures 1 and 5 which passes down through the vertical axis of the pillar frame D and enters the cylinder I at the top as shewn in Figures 1 and 5. The vessel K communicates with the cylinder H by means of the pipe O^1 Figures 1 and 5 which is continued into the pipe O^2, this latter is large enough to form an annular space around the upper part of the descending vertical inner pipe O, seen best at Figure 5; O^3 Figures 1 and 5 is a stuffing box provided on the lower end of the outer pipe O^2; from the bottom end of the inner pipe O the bent pipe O^3 is carried down to the top of the cylinder I and from the stuffing box part O^4 (which by lateral openings communicates with the annular space O^2) a pipe O^5 leads to the trunnion of the cylinder H; a modification of this arrangement is shown at Figures 7 and 8. P and P^1 are handles for admitting the water by means of cocks or valves P^2 to the pipes O^1 or O as desired.

In order to rotate the pillar frame D round its pivots D^1 D^2 I may employ an arrangement as shewn in detail in Figures 9 and 10 (but not in the general views Figs. 1, 2 and 3) where S is a third cylinder with piston and a rack T and sector wheel U the latter being fixed on the pillar frame D. All the cocks and valves described are accessible from the platform Q for the attendant. The machine when used for excavating earth or comparatively soft or loose materials is worked as follows. Being brought up on rails to the face of the soil to be excavated the machine is steadied or temporarily secured in position by screwing down the four shoes R on to wooden blocks or planks R^1 which rest on the sleepers or on the ground. Steam is then permitted to pass into the vessel K^1 by suitably opening the slide valve M^1. The water is thereby driven from the vessel K^1 the steam pressing on the upper surface of the water therein (with an intervening loosely fitting piston or float if desired); the water is forced through the pipes O^3 and O^4 into the space below the piston in the cylinder H causing this piston to move outwards and upwards and causing the scoop arm F to move radially round the gudgeon F^2 about one fourth of a revolution in a vertical plane, the scoop F^1 filling itself with earth or other soil as it rises. Then the pillar frame D is caused to rotate (by admitting water under pressure into the cylinder S) swinging round the scoop frame F and the filled scoop F^1 to a position at right angles to the rails which carry the machine, and thus bringing the scoop over the waggons which convey the earth away; the scoop is then by means of the lever

gear for detaching and opening the bottom F^4 emptied into the waggon in the usual manner. By means of the lever M^1 steam is now admitted to the top of the water surface in the vessel K whereby water under pressure through the pipes O^1 O^2 is admitted to the upper part of the cylinder I depressing the piston therein and by means of the piston rod I^1, cross head I^2 and chains I^3 I^3 pulling back or raising the lever frame E. This latter which previously leant forward at the top is now drawn back into about a vertical position. The water above the piston in the cylinder I is allowed to escape back to the vessel K from which the steam has been previously allowed to escape into the exhaust pipe M^2 by suitably moving the lever M^1. The piston in the cylinder I will now be raised by the weight of the scoop F^4, scoop lever F and the parts connected thereto the lever frame E descends in a different path from that in which it ascended thus clearing the earth to be removed. The pillar frame D has been previously caused to rotate back to its original position. This process is repeated the machine being shifted up to the earth to be excavated from time to time as the work proceeds.

For cutting into sandstone chalk or similar materials I prefer to give the cutting tool a forward and downward movement.

And having thus described and ascertained the nature of this Invention and the manner in which it is or may be carried into effect I declare that I claim:—

First:—The combination of parts forming the improved excavating machine consisting of the following main parts *viz*, a bed frame mounted on railway wheels and carrying at one end a steam boiler and at the other end an upright pillar frame having its upper or neck bearing in a crane like post and provided with a lever frame which can be raised and lowered by chain connection to the piston rod of a cylinder on the pillar frame the said lever frame carrying an arm or frame to the lower end of which the scoop or other tool is connected, a cylinder being connected by trunnions to the pillar frame and by its piston rod to the scoop frame so that the latter may thereby be swung backwards or forwards round its fulcrum on the lever frame, the pistons of the said two cylinders being actuated as required by suitable valve gear for admitting steam or water under steam pressure from corresponding closed vessels on the bed frame and for exhausting said steam all substantially as described and shewn.

Second: The application of water under direct steam pressure in closed vessels for actuating pistons in cylinders connected to parts of excavating machines as described.

Third:—The combination of the crane post C, upright pillar frame D, lever frame E scoop frame F, and the cylinders I and H as shown in the accompanying Drawings.

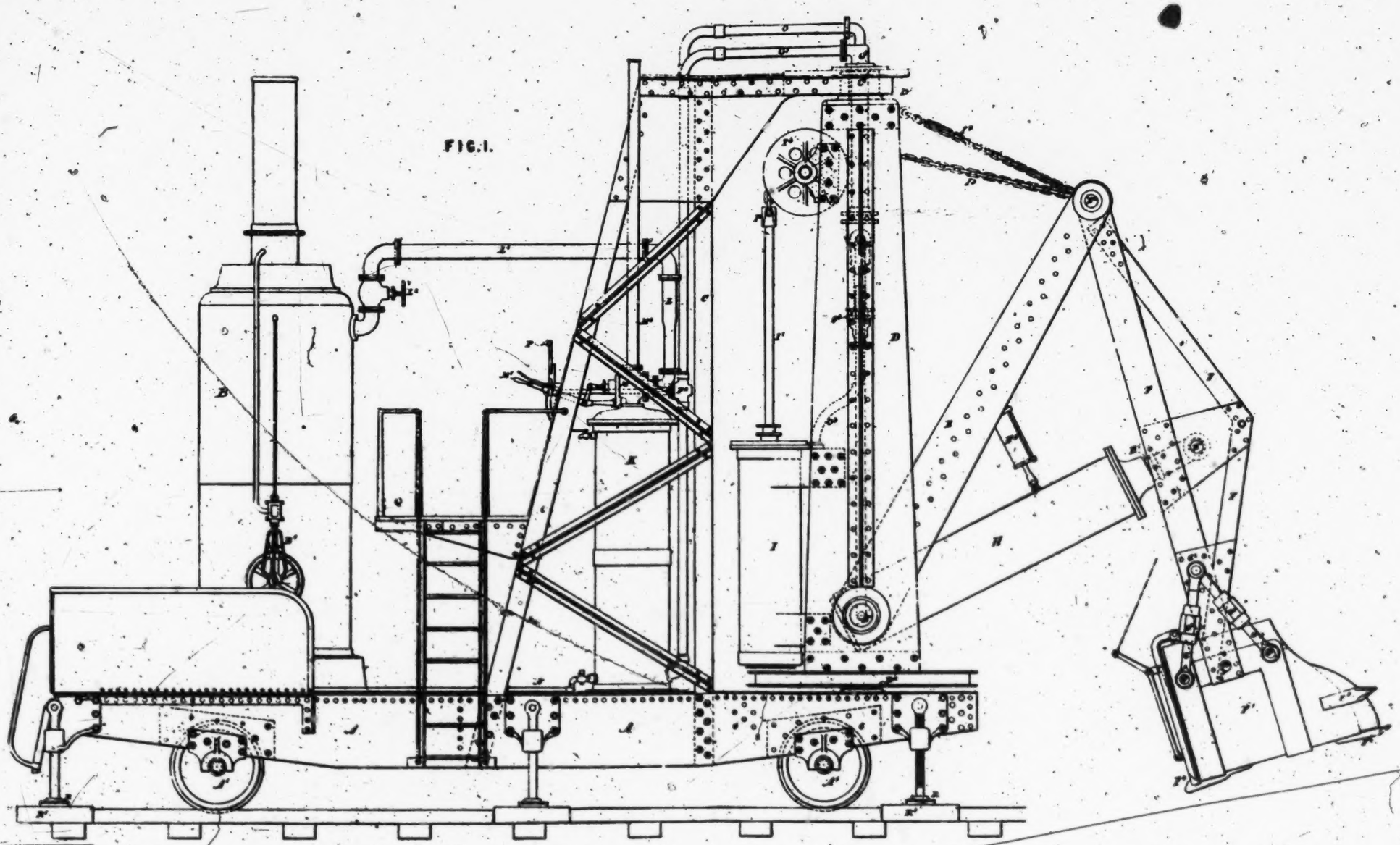
In witness whereof I the said Patrick Walter D'Alton have hereunto set my hand and seal this Ninth day of August in the year of our Lord One thousand eight hundred and eighty two.

P. WALTER D'ALTON. (L.S.)

LONDON: Printed by George E. E. Eyre and William Spottiswoode,
Printers to the Queen's most Excellent Majesty.
For Her Majesty's Stationery Office.

1882.

FIG. 1.



London: Printed for George Edward Eyre and William Spottiswoode,
Printers to the Queen's most Excellent Majesty. 1882.

Malby & Sons, Photo-Litho

A.D. 1882. Feb. 10. N° 655.
D'ALTON'S Specification.

(3 SHEETS)
SHEET 3.

FIG. 2.

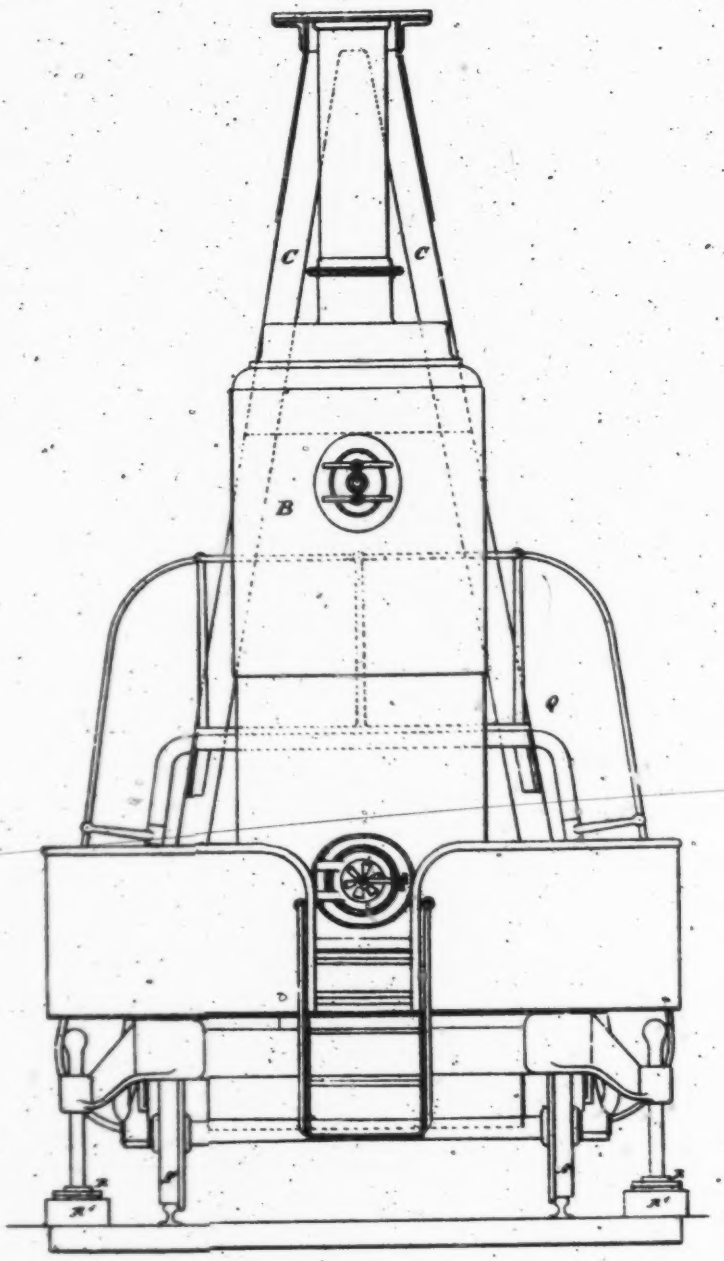
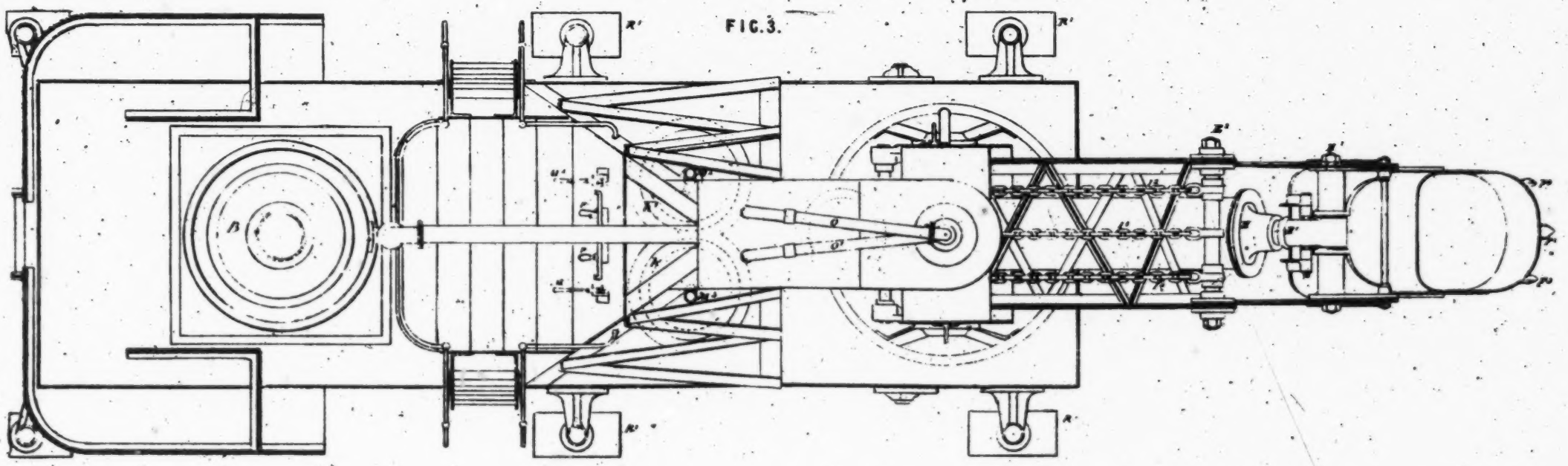


FIG. 3.



London: Printed by George Edward Eyre and William Spottiswoode
Printers to the Queen's most Excellent Majesty. 1862.

Malby & Sons, Photo-Litho

A.D. 1862. Feb. 10. N° 655.
D'ALTON'S Specification.

(5 SHEETS)
SHEET 4.

FIG. 4.

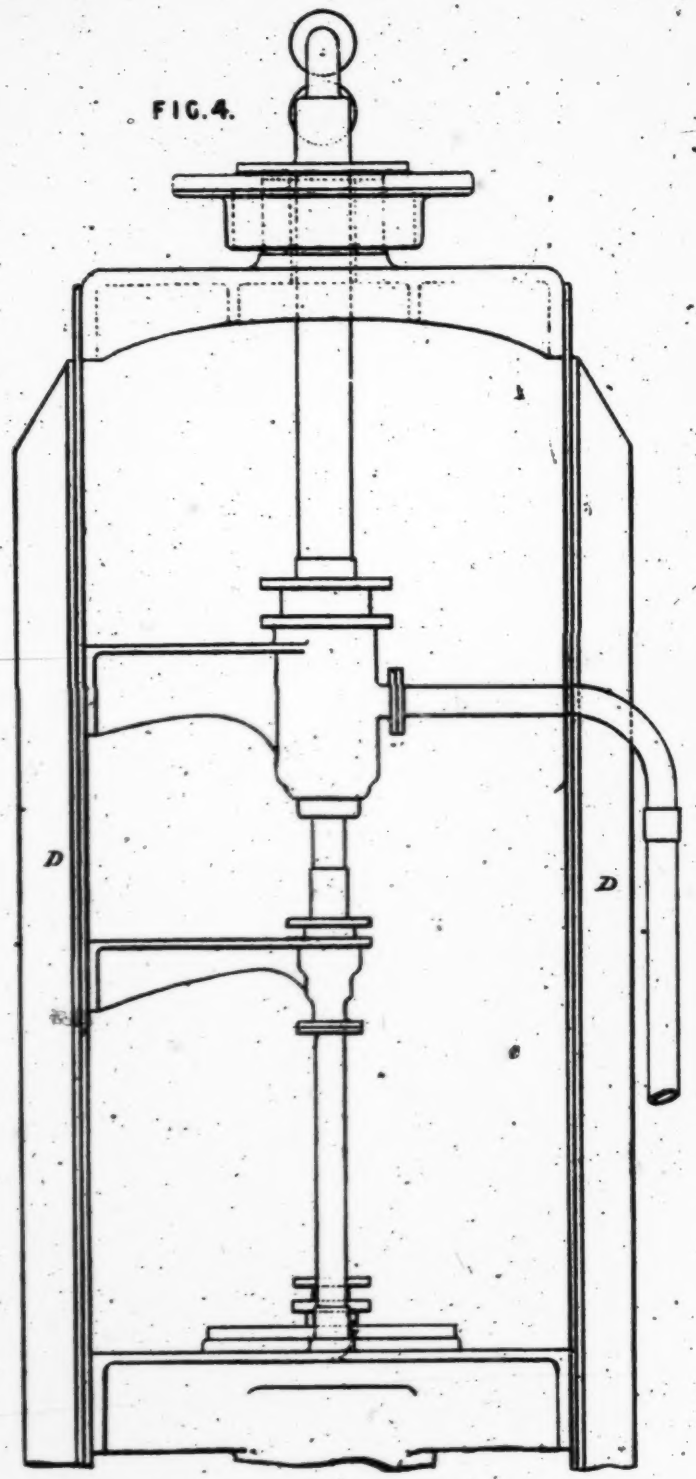


FIG. 7.

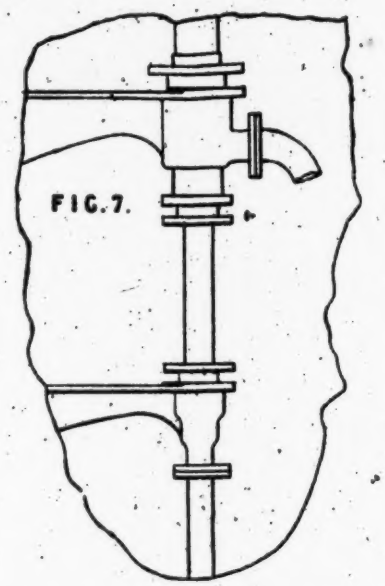


FIG. 8.

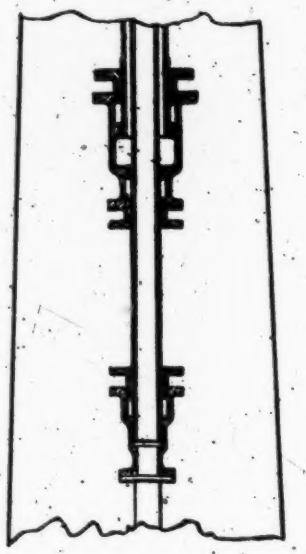


FIG. 5.

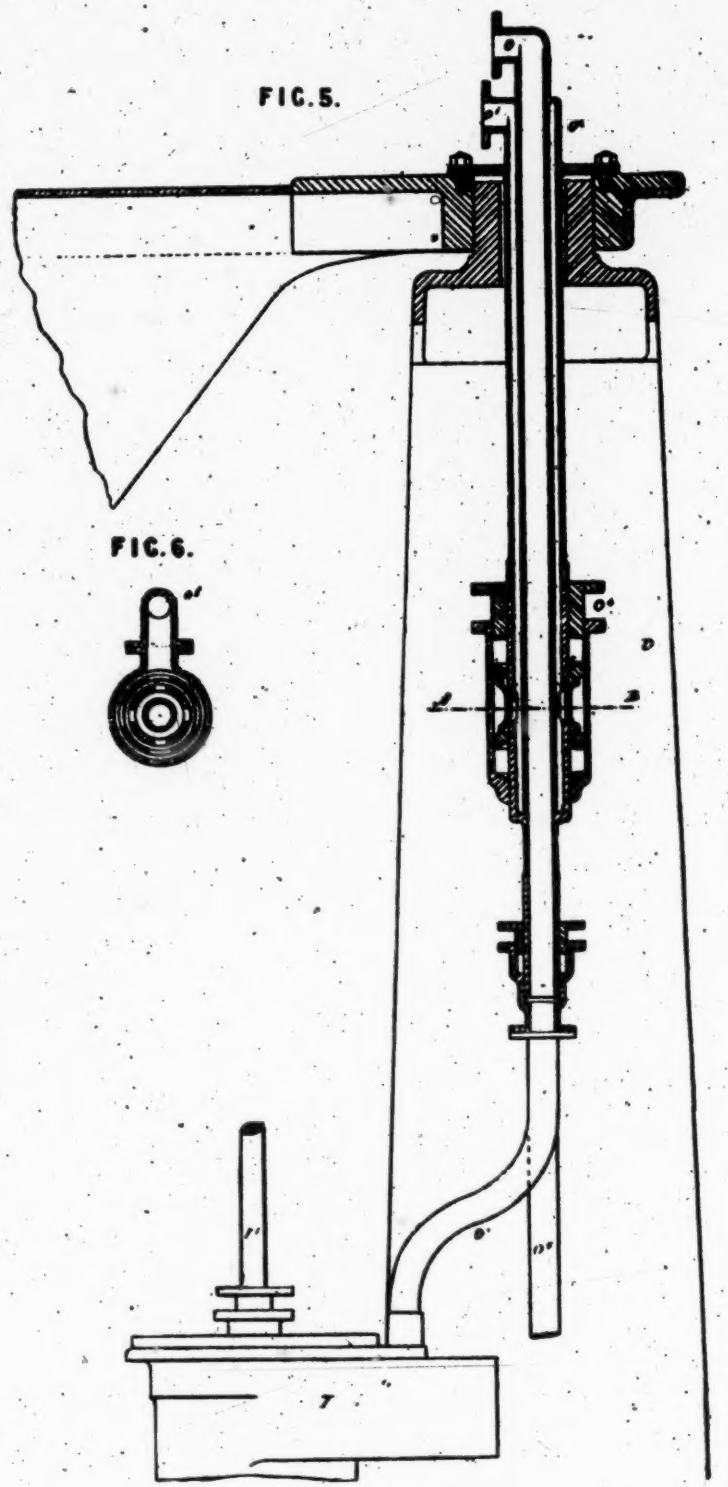


FIG. 6.

FIG. 9.

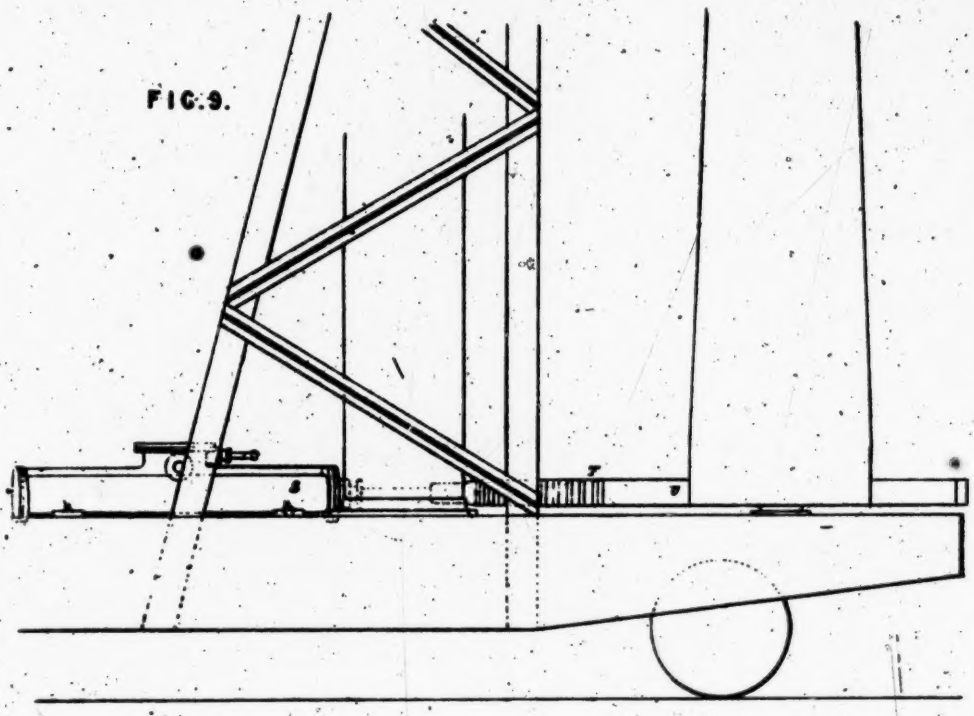
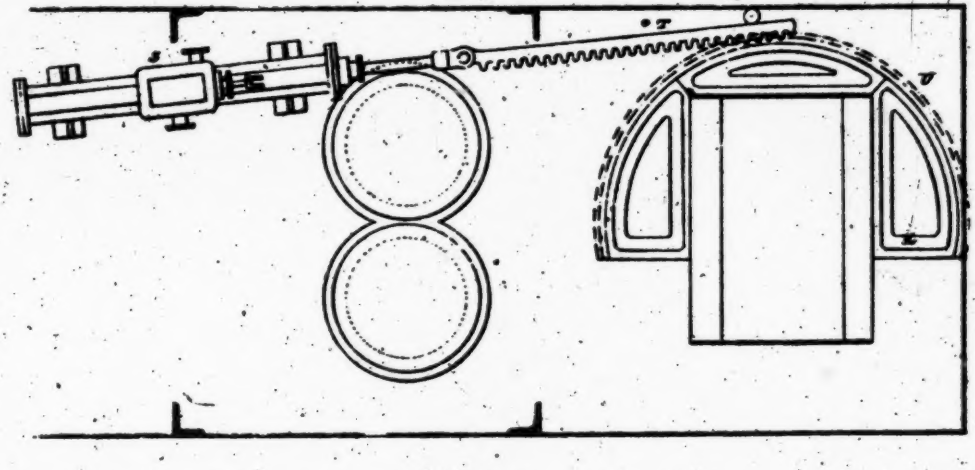


FIG. 10.



DEFENDANT'S EXHIBIT NO. 62(120)

Book of Patents

(Filed May 16, 1931)

1269

[Cases Nos. 964 and 965]

N° 6266 A.D. 1899

Date of Application, 23rd Mar., 1899—Accepted, 27th May, 1899

JUL 5 1899

COMPLETE SPECIFICATION.

Improvements in Cranes for Dredging or Excavating.

I, HAROLD WILLIAM JOSHUA CHEFFINS, Engineer, of St. Edmonds, The Terrace Greenhithe, in the County of Kent, do hereby declare the nature of this invention and in what manner the same is to be performed, to be particularly described and ascertained in and by the following statement:—

My improvement can be applied to any ordinary jib crane and is as described hereunder.

Attached to the underside of the jib of the crane, and swinging on a pin or hinge, I have a long arm, made in any suitable manner of wood, iron, or other suitable material, and at the outer end of this arm I have attached another long arm, working on a hinge or pin and thus forming an elbow joint. At the end of the second arm is attached the bucket, which is of the ordinary steam navvy type, fitted with teeth for breaking away the chalk, rock, or gravel, or whatever is being dealt with, and having a movable bottom for emptying.

The first arm referred to is pivoted at any suitable distance, say about 10 feet, from the top of the jib of crane. From the elbow formed by the junction of the two arms, I lead a guy rope, or chain, over the head of crane, and to a drum, connected to a crank shaft worked by a cylinder actuated by steam, or water, or in any suitable way. The guy rope is continued down, and round a roller placed at the foot of crane, or in any suitable position on the crane jib, and again to the elbow joint.

The object of this guy rope or chain is to enable the bucket to be pushed into, or drawn away from, the face of the material being worked.

The bucket is hoisted to the top in the ordinary manner, except that the hoisting chain pulley is about half way down, instead of being at the head, of the jib of crane.

I also have a break, either hand or foot, for checking the guy rope or chain and for putting tension on the apparatus when necessary.

Or instead of this method I make my improved crane as follows—At the top end of the jib I have a fixed arm, sloping downwards at a suitable angle, made in any suitable manner of wood, iron, or other material and of a suitable length, and near the bottom end of this arm I have a stay or beam running back horizontally to the jib of crane. At the end of the fixed arm I have a girder or balk of timber, swung vertically, which carries the bucket at its bottom end. This beam or girder runs against rollers at the back, whilst on the front I have a rack, with a corresponding toothed wheel placed at the end of the first arm, a chain wheel and endless chain being also attached, the chain running to the bottom end of the jib and round a chain wheel worked by suitable gearing. By this means the beam or girder which carries the bucket can be raised or lowered as desired. Attached to the bucket there is a pulley block with a chain or rope leading back to the jib, round a roller, and then to a drum worked by steam or water or in any suitable manner, to enable the bucket to be drawn up against the face of the material being worked.

[*Price 8d.*]

Cheffins's Improvements in Cranes for Dredging or Excavating.

The great feature of my improved crane is, that whilst the crane itself can remain on the surface, the material being excavated can be dug out from below the surface, either perpendicularly, or at any desired angle, or to any desired depth, thus doing away with the necessity of pontoons when dredging or excavating in water, or of keeping the crane on a level with its work, as is now necessary, when dealing with dry materials. Another special feature also, is that the bucket or digger is drawn upwards and against the face of its work on the same side as the crane, instead of on the side away from the crane.

The drawings annexed show side elevations of my improved crane, in position for working, of both methods described above for carrying out my invention.

In Fig. 1, A is the crane jib, B the arm pivoted to the jib A, and C the second arm pivoted to arm B, arm C carrying the bucket D. Attached to the bucket is the chain or rope E this rope passing round a roller at B^1 on to a drum F which is worked by a crank shaft connected to a cylinder. A chain or rope G is attached to the knuckle joint C^1 and passes round the roller H on the top of the jib A and then down on to a drum at the foot of crane. The chain or rope G^1 is also attached to the knuckle joint C^1 and passes round a drum I on the crane, the crane standing on the surface of the ground J so that the earth, chalk, or whatever it may be, is drawn up to the surface, the bucket digging towards the crane instead of, as is usually the case, away from it.

Fig. 2 shows the second method as described above of carrying out my invention. At the top end of the jib A, I have a fixed arm B, sloping downwards at a suitable angle, at the bottom end of this arm I have a stay or beam C, running back horizontally and fixed to the jib A, thus holding the first arm B in position. At the end of the arm B, I have a girder or balk of timber D, which works up against the rollers E, E, these rollers being pivoted between two triangular shaped plates R pivoted to the beam B, the girder or timber D passing in between the two triangular plates R. On the front side of the girder or timber D, I have a rack F with a corresponding toothed wheel G, with a chain wheel H, and an endless chain I, running round the chain wheel J. At the end of the girder or timber D there is a bucket or digger K with teeth L. Attached to this bucket K there is a pulley block M a chain or rope N attached to the jib A passing round the pulley M back round the roller O and then to the drum where the power is given out. The crane is on the surface of the ground P and the digger or bucket works up the side Q.

It must be understood that I do not confine myself exactly to the details herein described and shown in the drawings, these can be modified if found desirable, but as already stated the novelty of my invention lies in the arrangement of the bucket pole, which is turned and works towards the crane, and the ability to excavate to any depth below the surface whilst the crane stands on it.

Having now particularly described and ascertained the nature of my said invention, and in what manner the same is to be performed, I declare that what I claim is:—

1. The improved crane for dredging and excavating, substantially as described and shown in drawings.

2. In a crane for dredging or excavating the method substantially as described and shown in drawings, of digging below the surface of the ground or water the crane itself standing on the surface of the ground.

3. An improved crane in which the bucket or digger works below the level of the bottom of the crane and towards the crane substantially as described, and shown in drawings.

4. In a crane for dredging or excavating the method of working the bucket or digger by means of arms connected to the jib of the crane and controlling same by means of ropes or chains substantially as described and shown in drawings.

5. In a crane for dredging or excavating, the use of a girder or timber for carrying the bucket or digger, and the method of working and controlling this girder

12718

or timber so that the bucket or digger is kept up to the face of its work at any angle, and also the method of raising and lowering same substantially as described and shown in drawings.

Dated this 23rd day of March 1899.

H. W. J. CHEFFINS.

Redhill: Printed for Her Majesty's Stationery Office, by Malcomson & Co., Ltd.—1899.

[This Drawing is a reproduction of the Original on a reduced scale.]

2 SHEETS
SHEET 1.

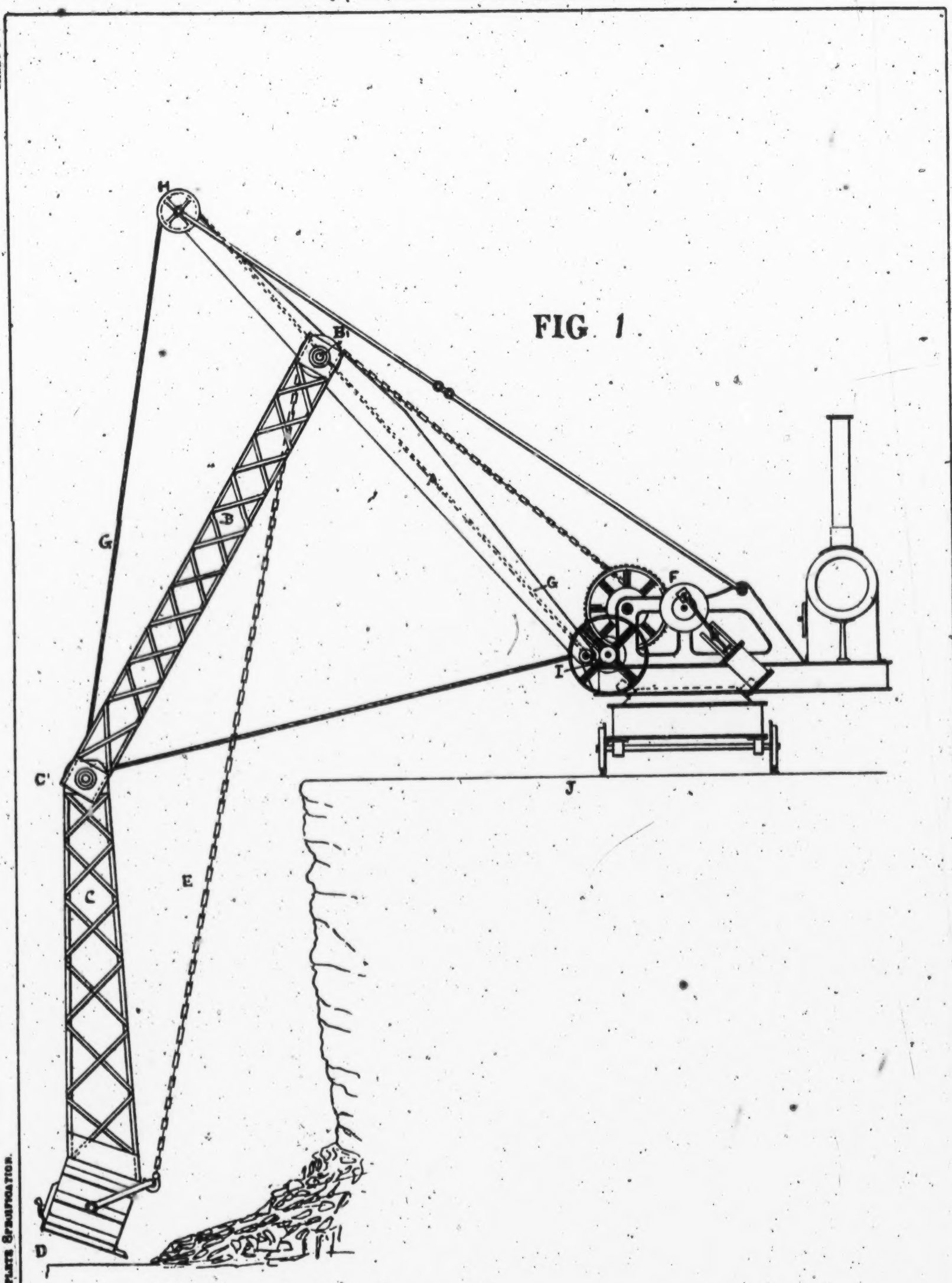


FIG. 1.

A.D. 1898. March 23. N°. 6266.
GRIFFIN'S Complete Specification.

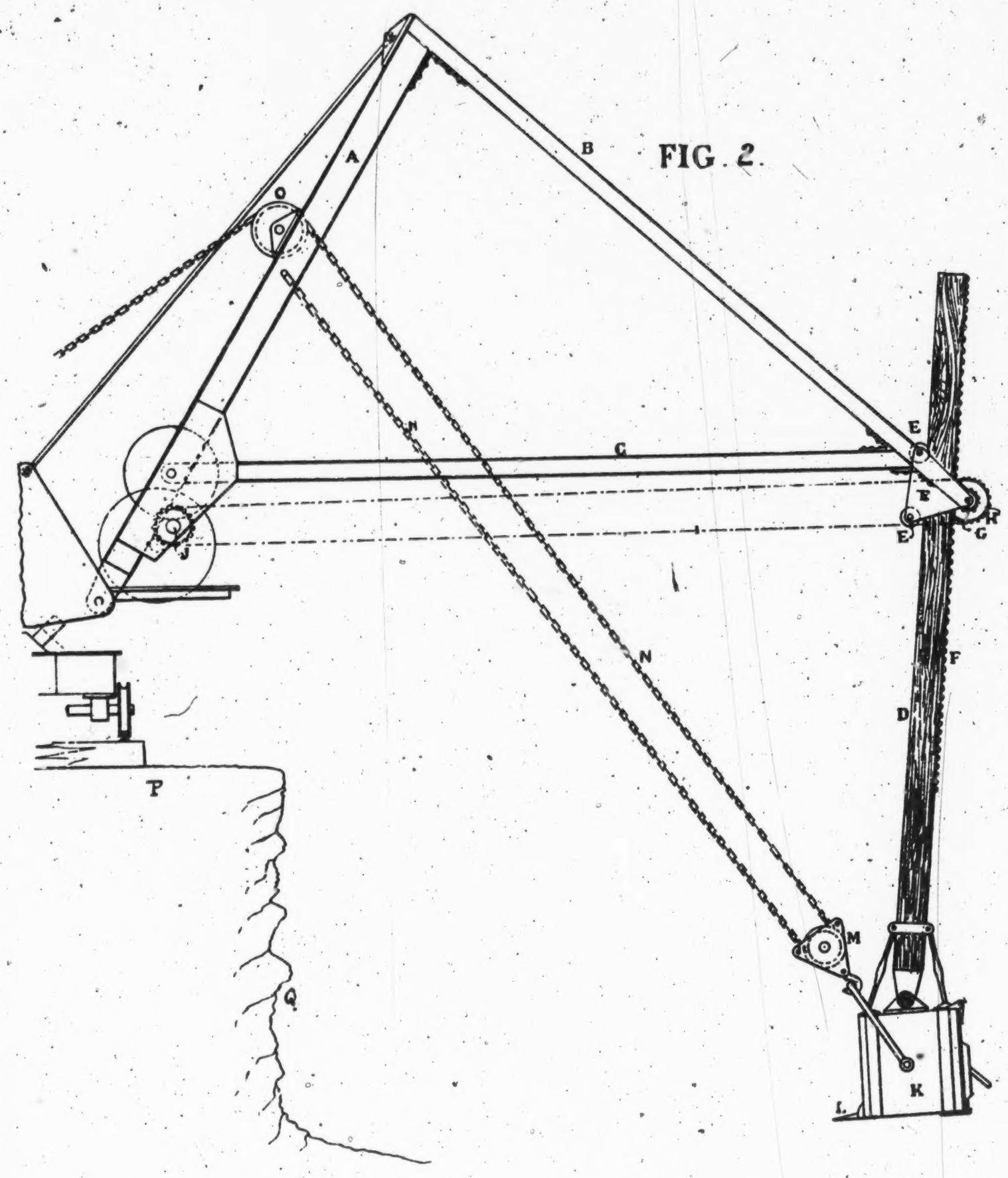
Malby & Sons, Photo-Lith.

[This Drawing is a reproduction of the Original on a reduced scale]

2 SHEETS
SHEET 2

Kelly & Sons Photo-Litho

FIG. 2.



A.D. 1898. March 23. N°. 6366.
GRIFFIN'S Complete Specification.

DEFENDANT'S EXHIBIT NO. 62(121)
Book of Patents.
(Filed May 16, 1931)
[Cases Nos. 964 and 965]

N° 9893 A.D. 1899

Date of Application, 10th May, 1899
Complete Specification Left, 9th Mar., 1900—Accepted, 14th Apr., 1900

LIBRARY
JUN 1 1900 S.
PATENT OFFICE.

PROVISIONAL SPECIFICATION.

Improvements in Apparatus for Excavating.

I, THOMAS WHITAKER, of Horsforth, near Leeds, in the County of York, Contractor, do hereby declare the nature of this invention to be as follows:

This invention relates to improvements in excavating apparatus or what are known as steam crane navvies which are intended to excavate trenches or the like below the ground level upon which the base of the crane rests.

I make the jib of triangular formation or of other suitable shape extending out a considerable distance beyond the pivoted upright member.

At the lower end of the upright member is placed a drum or pulley actuated by suitable gearing either by hand or by power and at the outer end of the jib is pivoted a swinging or oscillating cradle by which the bucket arm is suspended and operated.

The cradle is provided with two drums or pulleys one of which receives a driving rope band or chain from the drum or pulley on the upright member and the other a rope attached at both ends to the bucket arm.

The cradle is also provided with two or more guide rollers between which the bucket arm slides.

The bucket arm and bucket are suspended by a rope attached to the arm at both ends by means of T channel or angle iron stays which are movable or adjustable in position according to the depth of excavation required screws are also provided to take up the slack of the ropes and keep them tight.

The rope that suspends the bucket is passed round the drum and by turning the drum in one direction or the other the bucket is raised or lowered to the desired height. The rope drum is operated by the drum at the other end a rope passing from one to the other.

The excavating is performed by the ordinary crane rope and the arm and bucket may when raised into a horizontal position be drawn backwards and forwards by the suspending rope.

Dated this 6th day of May, 1899.

WM. P. THOMPSON & Co.,
6, Bank Street, Manchester, Patent Agents.

COMPLETE SPECIFICATION.

Improvements in Apparatus for Excavating.

I, THOMAS WHITAKER, of Horsforth, near Leeds, in the County of York, Contractor, do hereby declare the nature of this invention and in what manner the

[*Price 8d.*]

same is to be performed, to be particularly described and ascertained in and by the following statement:—

This invention relates to improvements in excavating apparatus or what are known as steam crane navvies which are intended to excavate trenches or the like below the ground level upon which the base of the crane rests.

The invention will be fully described with reference to the accompanying drawings.

Fig. 1. Side elevation.
Fig. 2. Plan.
Fig. 3. Side elevation showing the bucket in a different position.
Fig. 4. Side elevation of detail enlarged.
Fig. 5. Plan of same.

The jib A is of triangular lattice work formation supported by and extending out a considerable distance from the upright pivoted member B.

To the upright member B is fitted a winch or crab C with drum *c* actuated by suitable gearing either by hand or power and at the outer end of the jib A is pivoted an oscillating cradle D in which the bucket arm E is suspended and in which it is free to move or slide longitudinally. The cradle D is provided with two or more guide rollers *c* between which the bucket arm slides.

At the outer end of the jib A I attach a drum or winch F actuated by the rope or chain pulleys G and H. The pulleys G and H are driven by ropes or chains K from the winch or crab C on the upright member B the ropes being so attached or arranged that the pulleys may be rotated in either direction.

A rope or chain L or two such ropes or chains are attached to the drum F in such a way that when the drum is rotated one end of the rope or chain is wound up and then unwound. The free ends of the rope or chain L are attached to the opposite ends of the bucket arm E to the cross stays M which may be of T angle or other cross section. The cross stays M may be adjustable in position if desired. The rope or chain is attached by means of screws *m* by which the slack can be taken up and the rope or chain kept tight.

In operation the drum F is turned in one direction or the other by means of the winch C the ropes or chains K on the pulleys G and H and the bucket N is by the rope or chain L raised or lowered to the desired height.

The excavating is performed by the crane rope O attached to the bucket N and operated by the winch P.

Having now particularly described and ascertained the nature of the said invention and in what manner the same is to be performed I declare that what I claim is:—

Excavating apparatus particularly applicable for excavating trenches having the several parts constructed and arranged in combination substantially as described.

Dated this 8th day of March 1900.

WM. P. THOMPSON & Co.,
Manchester, Liverpool and London,
Patent Agents.

Redhill: Printed for Her Majesty's Stationery Office, by Malcomson & Co., Ltd.—1900.

A.D. 1899. May 10. N° 9893.
WHITAKER'S Complete Specification.

3 SHEETS]
SHEET 1.

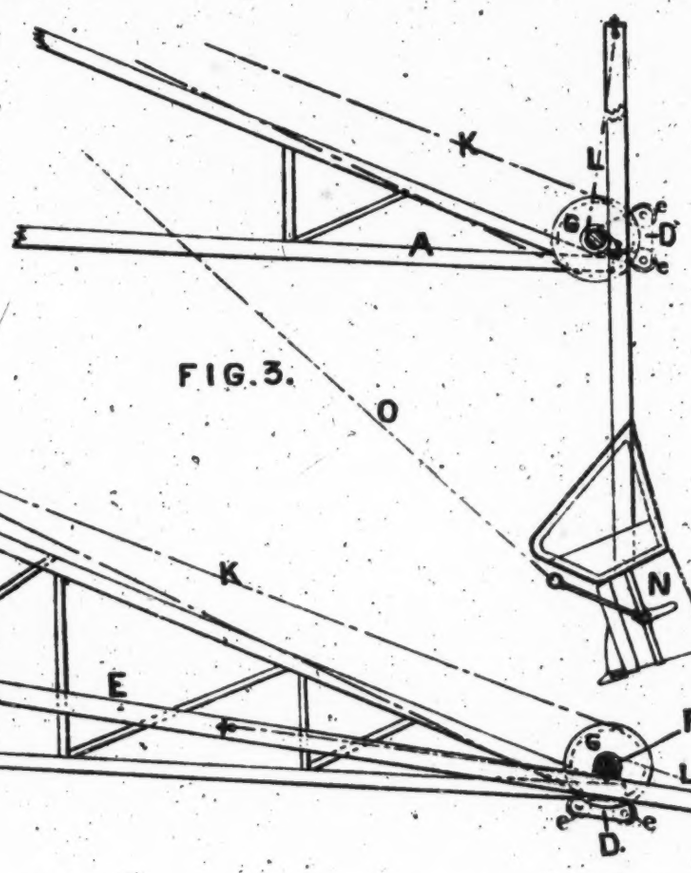


FIG. 3.

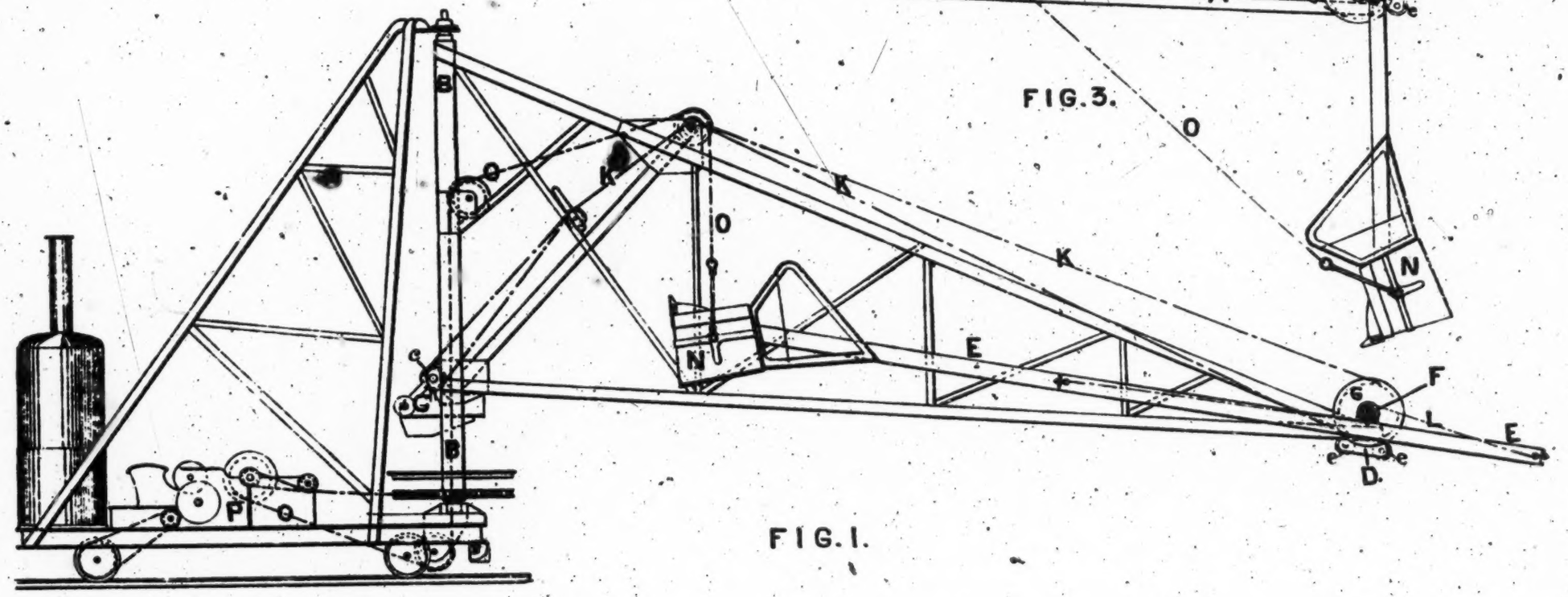


FIG. 1.

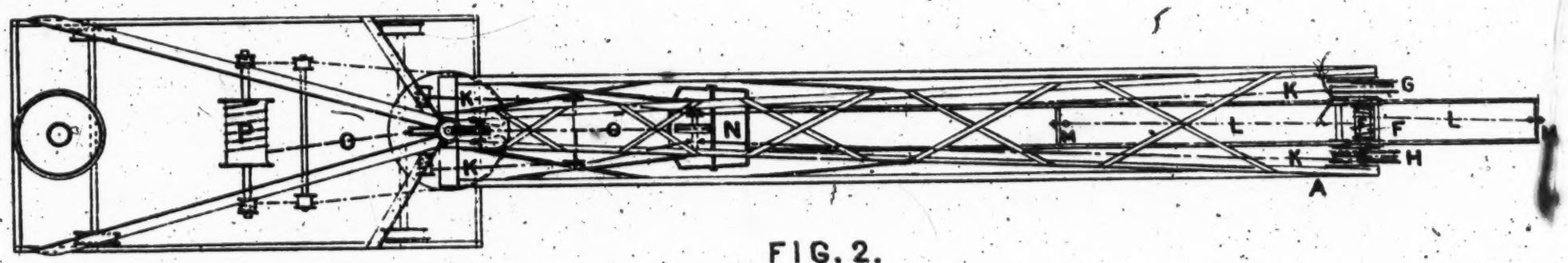


FIG. 2.

[This Drawing is a reproduction of the Original on a reduced scale.]

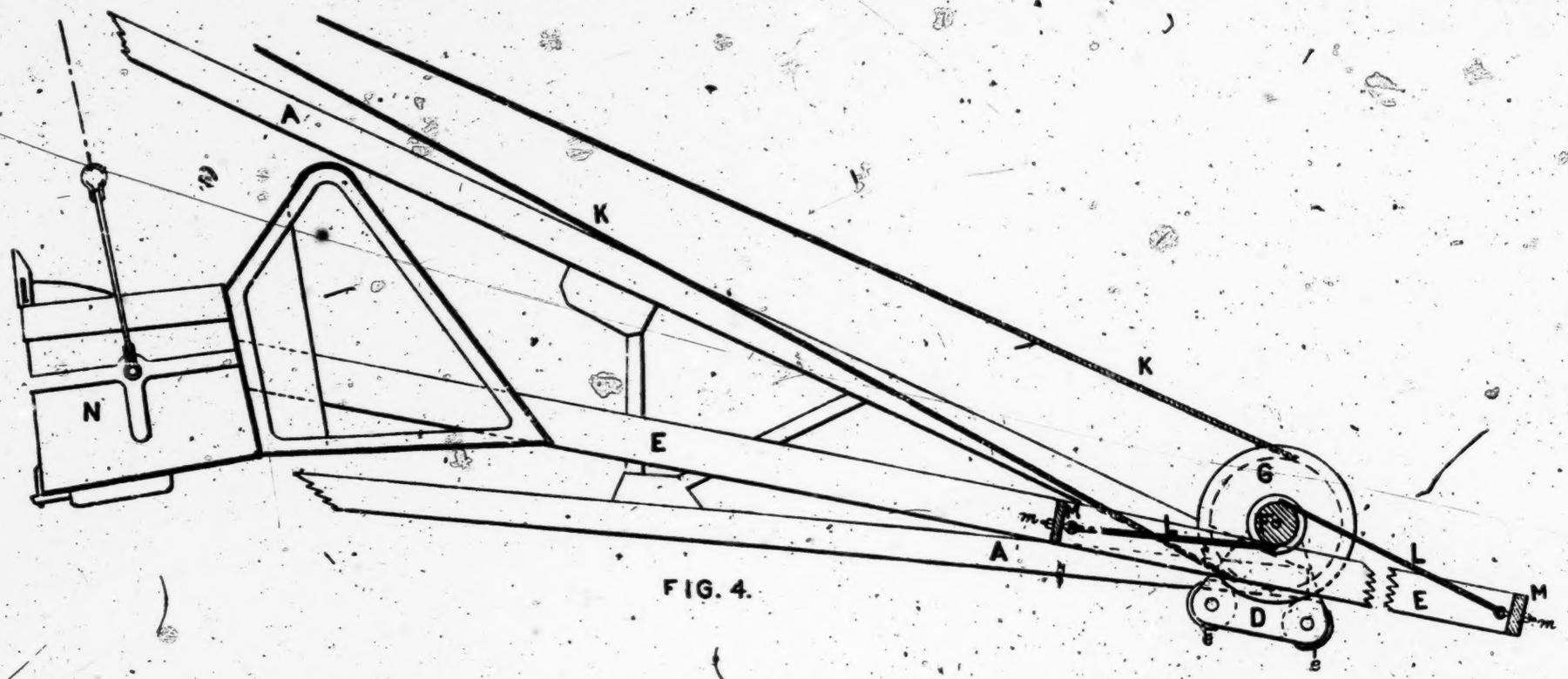


FIG. 4.

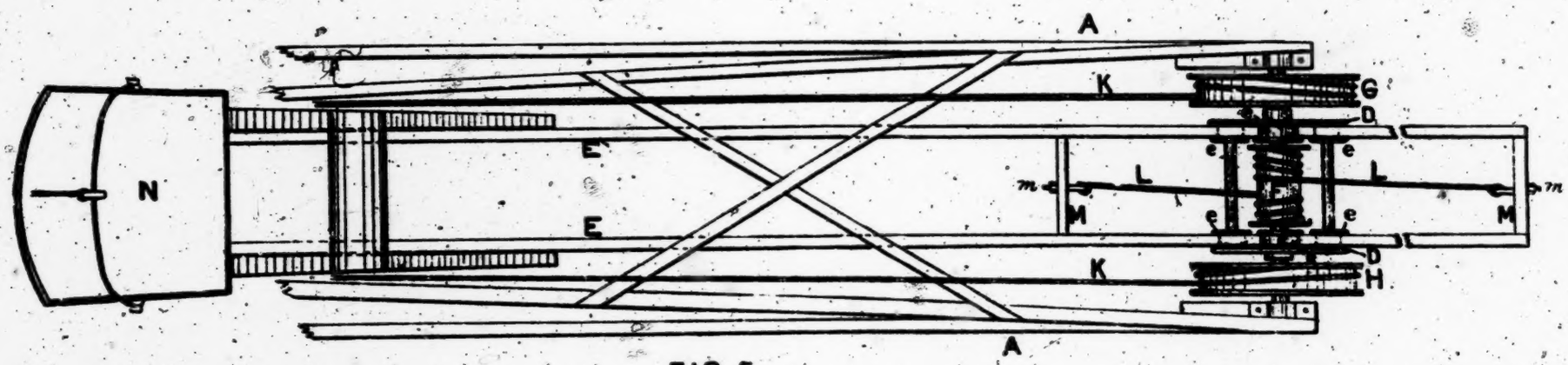


FIG. 5.

This Drawing is a reproduction of the Original on a reduced scale.

DEFENDANT'S EXHIBIT NO. 62(122)
Book of Patents
(Filed May 16, 1931)

N° 11,496 A.D. 1903

Date of Application, 20th May, 1903
Complete Specification Left, 15th Feb., 1904—Accepted, 31st Mar., 1904

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MAR 10 1904
PATENT OFFICE

PROVISIONAL SPECIFICATION.

"Improvements in and connected with Steam Excavators."

I HARRY JUBB of Wood Cottage Anchor Pit. Rastrick, in the County of York. Fitter. do hereby declare the nature of this invention to be as follows:—

The object of my invention is by an improved construction of steam excavators to cut trenches any suitable depth below the foundation or level of the track upon which the excavator is at work, yet at the same time always keep the navvy or excavator upon a solid foundation.

I prefer to construct the jib of the excavator at right angles to the vertical pillar or tower, and of a suitable length. Bolted to the jib upon each side are preferably two plates or brackets connected by and supporting a stud or shaft carrying pinion wheels, these pinions gear with the racks upon the bucket arm carrying the bucket. A bent bracket bolted to each of the aforesaid brackets, carries antifriction rollers which bear against the back of the bucket arm and keep the racks in gear with the pinions.

The bucket arm is so mounted that upon being put in operation it moves towards the excavator, excavating the trench and loading the bucket, as it continues its movement by the action of the winding mechanism the bucket arm assumes a horizontal position when the jib may be moved so as to deposit the contents of the bucket either upon the side of the trench or into a truck as desired.

In order to lock the bucket arm and regulate the amount of excavation by the bucket, I preferably employ a gear wheel upon the pinion shaft., this gears with a second or intermediate gear wheel gearing with a small pinion upon a shaft carried by the jib. Also upon this shaft is a bevel wheel connected with further bevel wheels upon longitudinal and vertical shafts, to a brake wheel and treadle lever operated by the wheel man, In this manner the pinions gearing with the bucket arm racks can be released at will according to the action of the bucket.

By my improvements other work incidental to trenching and the like can be simultaneously proceeded with, with better facility than hitherto.

Dated this Seventeenth day of May 1903

JOHN E. WALSH,
Waterhouse Chambers Crossley Street. Halifax.
Patent Agent for the Applicant

COMPLETE SPECIFICATION.

Improvements in and connected with Steam Excavators.

I, HARRY JUBB of Wood Cottage Anchor Pit Rastrick in the County of York. Fitter do hereby declare the nature of this invention, and in what manner

the same is to be performed, to be particularly described and ascertained in and by the following statement:—

The object of my invention is the construction of an improved steam excavator, by the combination of same with ordinary steam travelling cranes; such excavator to cut trenches any suitable depth below the foundation or level of the track upon which the excavator is at work, yet at the same time always keep the trenching navvy or excavator upon a solid foundation and in advance of the head of the trench being cut.

Further, by the combination and use of my improved excavator in connection with the ordinary travelling crane, the contents of the bucket after being raised above the top of the trench, may be deposited upon either side of the track, or, (in the event of the crane being on uneven ground) at the rear of the crane so as to level up or facilitate the laying of the permanent way or track of the travelling crane. Or the contents may be emptied direct into trucks as desired.

DESCRIPTION OF DRAWINGS

Fig 1 is a side elevation showing my improved trenching excavator attached to and working in connection with, an ordinary steam travelling crane:—

Fig 2 is an end view of Fig 1

Fig 3 is a plan of jib, bucket arm, and mechanism for operating bucket arm in connection with my improved trenching excavator

I prefer to construct my improved trenching excavator so as to be readily fixed to an ordinary travelling steam crane, with the jib A of said excavator supported at right angles to a vertical pillar or tower B of the crane C and of a suitable length. Bolted, rivetted, or otherwise attached to the jib A upon each side, are prefably two plates or brackets D D, and bolted to these brackets are suitable bearings E supporting a stud or shaft F upon which are mounted pinion wheels G G; these pinions gear with racks H H attached to bucket arm J carrying the bucket K. An arm L hingeing upon the stud or shaft F, carries antifriction rollers M M, which revolve upon a stud or spindle N and bear against the back of the bucket arm J in order to keep the racks H H in gear with the pinions G G.

In order to lock the bucket arm J or regulate the amount of bite or excavation by the bucket K, I preferably employ a gear wheel P upon the pinion shaft F, this gears with a second or intermediate gear wheel R gearing with a small pinion S upon a shaft T carried by the jib A. Also upon this shaft T at one end, is a bevel wheel U, gearing with a similar wheel V upon a horizontal shaft W supported in suitable bearings attached to the side of the jib A; at the other end of this horizontal shaft W is a further bevel wheel X, gearing with a similar wheel Y upon a vertical shaft Z, and this shaft is geared in a similar manner with the brake wheel shaft 1. The brake shaft 1 is acted upon in order to control its movement, by the usual strap 2, brake pulley 3, and treadle 4 in the ordinary way. 2^A is the hand wheel for assisting or facilitating the movement of the bucket arm independant of or in addition to the winding mechanism.

The bucket arm J is so mounted that upon being operated, the bucket moves towards the excavator crane C, excavating the trench 5 and loading itself as it continues its movement; this operation of the bucket and bucket arm is effected by chain 6 attached to a bracket 7 bolted to the jib, such chain passing under a pulley 8 upon upon the bucket bridle or bale 9, and over pulley 10 also supported upon the jib A, and from thence to the crane winch 11; the bite of the bucket upon the face 12 of the trench being regulated by the amount of brake put upon the bucket arm J by the treadle 4 or brake pulley 3 aforesaid

As the bucket arm is raised, it gradually assumes a horisontal position (see dotted lines at Fig 1, the jib A may then be moved in any direction with

the crane C upon the circular roller carriage 13, and the contents deposited where required; the back of the bucket being opened for this purpose when desired by the usual hinged door 14, actuated by lever 15, and chain or rope 16 in the ordinary way. The position or angle of the bucket upon the bucket arm J being adjusted and fixed by the slots 17 and bolts 18 as desired.

The action is as follows:—As the winch commences to revolve and take up the rope or chain 6, the bucket K bites against or cuts into the head 12 of the trench, the continued winding in of the rope or chain 6 gives a radial and ascending movement to the bucket arm J and bucket K, causing the racks H to actuate the pinions G and mechanism connected with the brake wheel shaft 1 and treadle 4, Should the rotation of the pinions G G be impeded by the brake mechanism aforesaid, the outward movement of the bucket arm J is checked, so causing the bucket K to cut or bite deeper into the head of the trench. When the bucket with it's load has been raised into the position clear of the trench as shown in dotted lines at Fig 1, the jib A and crane C are moved in the desired direction for unloading same; the bucket is unloaded or emptied by pulling the rope 16 actuating lever 15 and door 14; immediately the contents have been discharged the jib is swung back, and as the rope 6 is let off, the bucket descends and the bucket arm assumes its customary position for the next operation.

By the general arrangement of the braking mechanism herein employed, the space between the end of the jib and the vertical pillar is clear, so that the bucket and bucket arm are not impeded or limited in their action. Also this arrangement of brake gear may be applied to ordinary steam navvys or excavators, and would be far safer and more effective and durable than the means hitherto employed. Further by my improvements other work incidental to trenching may be proceeded with simultaneously or in connection with above, with better facility than hitherto.

Having now particularly described and ascertained the nature of my said invention, and in what manner the same is to be performed, I declare that what I claim is:—

1. An excavator for cutting trenches and for similar purposes characterised by a jib A mounted upon a vertical pillar attached to a steam travelling crane, said jib supporting the bucket arm J carrying bucket K and operating, and regulating or controlling the action of said bucket arm and bucket, in the manner and for the purposes substantially as set forth.

2. In excavators for cutting trenches and for other similar or suitable purposes controlling and regulating the cut or bite of the bucket by means of suitable gearing and shafts supported by the jib A and pillar B, said mechanism being connected with and controlled by the ordinary brake shaft 1, brake pulley and treadle, in the manner and for the purpose set forth.

Dated this Twelfth day of February 1904

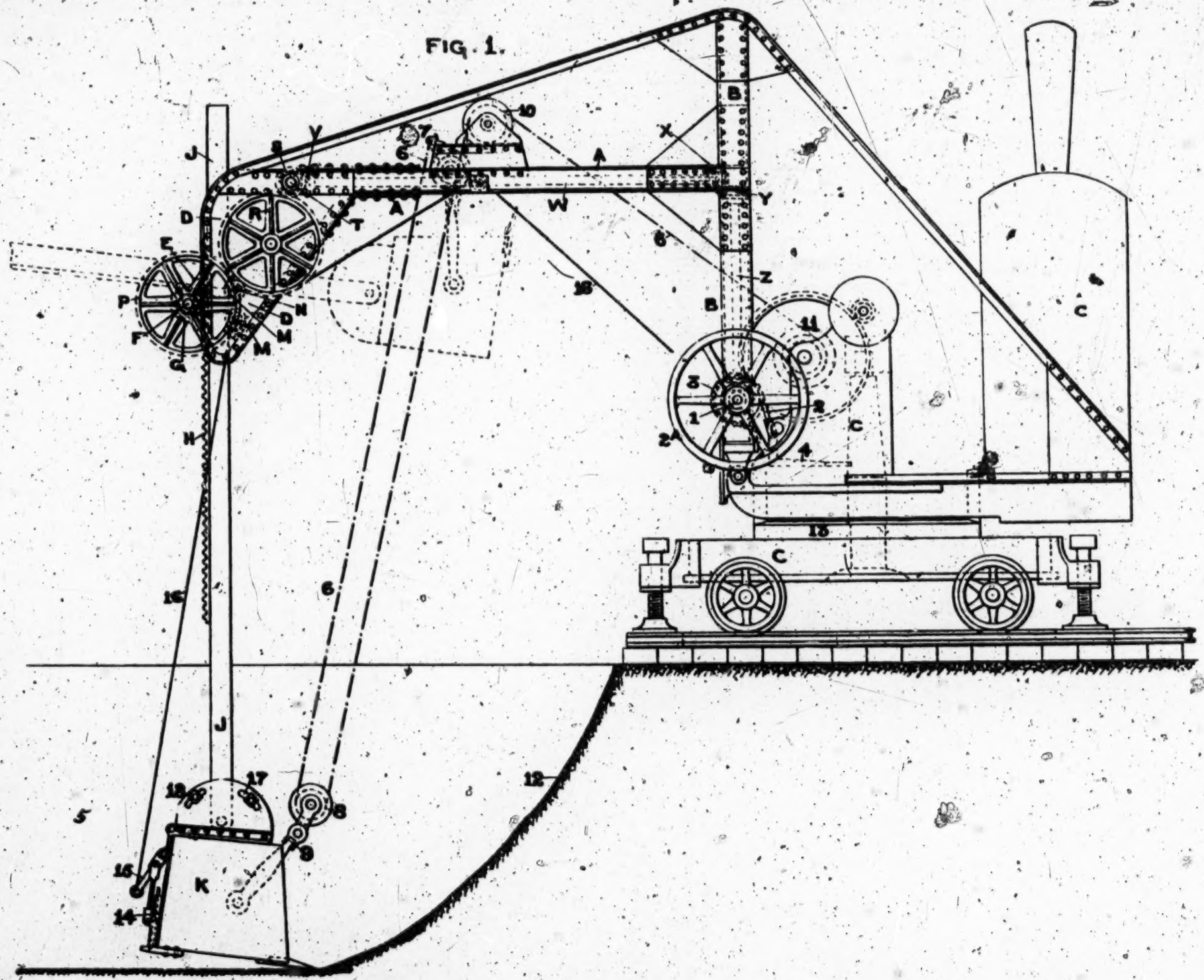
JOHN E. WALSH,
Waterhouse Chambers, Crossley Street, Halifax
Patent Agent for the Applicant

Redhill: Printed for His Majesty's Stationery Office, by Love & Malcomson, Ltd.—1904.

A.D. 1903. May 20. N° 11,498.
COBB'S COMPLETE SPECIFICATION.

2 SHEETS
SHEET 1.

FIG. 1.



[This Drawing is a reproduction of the Original on a reduced scale.

FIG. 2.

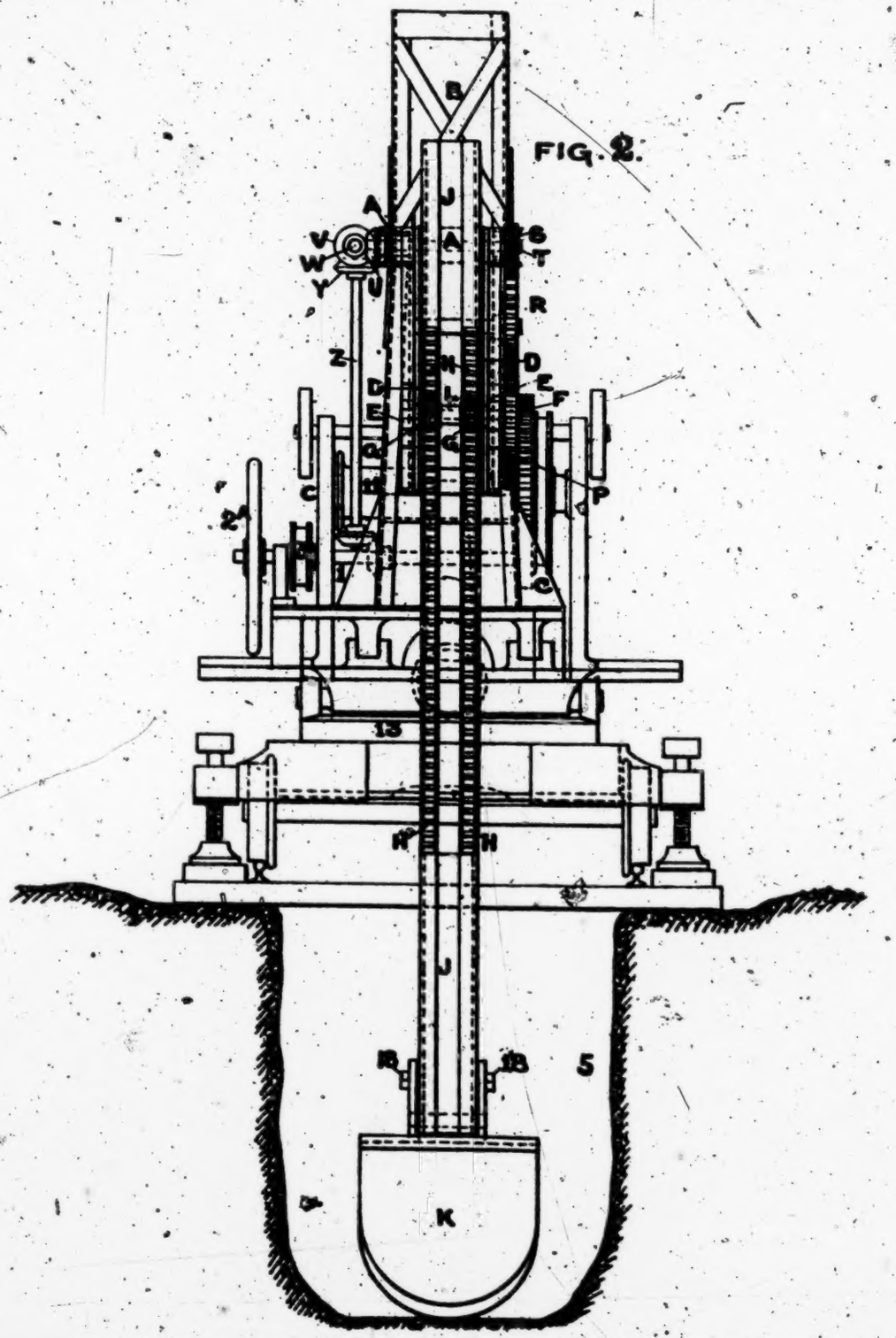
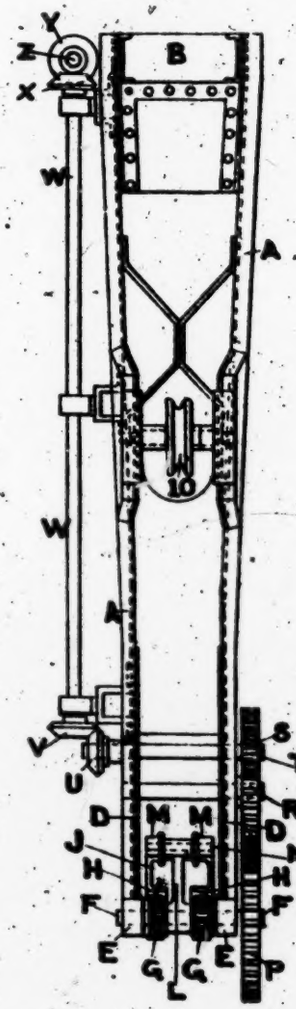


FIG. 3.



[This Drawing is a reproduction of the Original on a reduced scale.]

DEFENDANT'S EXHIBIT NO. 95.

Keystone Driller Co. Letter to B. R. Clutter, dated Feb. 11, 1925.

(Filed May 16, 1931.)

[Cases Nos. 964 and 965]

Feb. 11, 1925.

B. R. Clutter,
Edgewood Court,
Lakewood, N. J.

Dear Sir:—

We are just now in receipt of letter from Rex Downie in which he states that he has not definitely decided on the special considerations and the exact details, but he states that if you want to place your order for the shovel before he can reach final conclusion that we are to take your order on basis of initial cash payment of $500.00, maximum time of 18 months for the balance.

If this is what you understood by it, and are ready to close the deal, you can either come into the office or telephone us and we will arrange to send some one down to fix the contract with you.

Yours very truly,

R/S KEYSTONE DRILLER COMPANY.

DEFENDANT'S EXHIBIT NO. 97.

Invoice for Excavator, from Keystone Driller Co. to Clutter Contracting Co., dated March 9, 1925.

(Filed May 16, 1931.)

[Cases Nos. 964 and 965]

PRINTER'S NOTE:

This Exhibit, being identical with Sheet 2 of Defendant's Exhibit No. 37, has been omitted to avoid duplication. (See Page 240 of Exhibits, Vol. III.)

DEFENDANT'S EXHIBIT NO. 98.

Agreement, dated April 11, 1925, between Burn R. Clutter and the Keystone Driller Co.

(Filed May 16, 1931.)

[Cases Nos. 964 and 965]

MEMORANDUM.

This is to witness agreement made this day between the undersigned parties, Burn R. Clutter and the Keystone Driller Co.

1. Burn R. Clutter, for the consideration named below, hereby conveys, to the Keystone Driller Co. all right, title or interest that he may now have or may later acquire, as inventor or co-inventor, in that certain pivoted bottom ditcher scoop contrived by himself, or by him and Herbert Wallower, and which was built at a shop in Pittsburg, Kansas and tried out on one or more Keystone excavators at Joplin, Mo., during the period of November and December 1919 and January, February and March 1920.

2. In consideration of the above the Keystone Driller Co. hereby conveys to Burn R. Clutter a one-fourth ownership in that certain Keystone Excavator with equipment as furnished to him under contract-lease dated Feb. 28th, 1925.

3. In further consideration of above the Keystone Driller Co. hereby agrees, subject to the time-limit contained in fourth paragraph hereof, to convey to Burn R. Clutter a like additional one-fourth interest in said excavator and equipment, in the event and upon the occurrence of any one of the following three contingencies, namely, (1) if and when U. S. patent No. 1,511,114, issued Oct. 7, 1924 for "improvement in EXCAVATING MACHINES" shall have been declared by any U. S. district court, valid in claim as worded in Claim No. Six as issued; or (2) if and when any of the claims of the said patent No. 1,511,114 shall have been declared by any competent court, valid to the extent of securing to the owner of said patent the sole right to make and sell a machine-ward moving ditcher scoop having a pivoted bottom; or (3) if and when, due to action based upon the said patent No. 1,511,114, or any other patent owned by the Keystone Driller Co., or due to any threatened action by the Keystone Driller Co. the said Company shall have enjoyed for an uninterrupted period of one year the sole

manufacture and sale, in the United States, of a machine-ward moving ditcher scoop having a pivoted bottom.

4. It is agreed that the payment of one-fourth of the price of the machine and equipment named in second paragraph shall be suspended only until two years from date hereof, in anticipation of the possible occurrence of one of the contingencies named in the third paragraph, and that if at that time none of the contingencies named shall have occurred then the third paragraph hereof shall definitely lapse and the suspended one-fourth part of the price shall at once become due and payable in money.

Signed at ..... this .... day of ..... 1925.

.....

.....

Witnesses of both signatures:

.....

.....

DEFENDANT'S EXHIBIT NO. 99.

Acknowledgment by Keystone Driller Co. of Remittance from Clutter Contracting Co., dated April 14, 1925, for $500.00.

(Filed May 16, 1931.)

[Cases Nos. 964 and 965]

KEYSTONE DRILLER COMPANY
Beaver Falls, Pa.
New York, N. Y.

New York, Date April 14, 1925

We acknowledge receipt of	Amt. Rec'd $500.00
your remittance as follows:	Discount $.....
By Ck. # 381.	Interest $.....
To apply on Excavator as billed March 9, 1925.	Total Cr. $500.00

To Clutter Contr. Co.,
Edgewood Court,
Lakewood, N. J.

DEFENDANT'S EXHIBIT NO. 100.

Acknowledgment by Keystone Driller Co. of Remittance from Clutter Contracting Co., dated May 23, 1925, for $517.58.

(Filed May 16, 1931.)

[Cases Nos. 964 and 965]

KEYSTONE DRILLER COMPANY
Beaver Falls, Pa.
New York, N. Y.

New York, Date May 23, 1925

We acknowledge receipt of
your remittance as follows:
By Ck. # 367.

Cash payment, applying on Excavator as billed March 9, 1925. Balance of settlement in the shape of 17 promissory notes, each at $425.00, all dated April 14, 1925, secured by chattel mortgage.

Amt. Rec'd $517.58
Discount $.....
Interest $2.58
Total Cr. $515.00

To Clutter Contr. Co.,
Edgewood Court,
Lakewood, N. J.

DEFENDANT'S EXHIBIT NO. 102.

Keystone Driller Co. Letter, dated March 16, 1926, to B. R. Clutter, and Bank Notice.

(Filed May 16, 1931.)

[Cases Nos. 964 and 965]

March 16, 1926.

Mr. B. R. Clutter
Edgewood Court
Lakewood, N. J.

Dear Sir:

The Peoples National Bank have returned to us unpaid your note dated April 14th at eleven months for

$425 and interest; with the statement that you are remitting direct. The interest on the note amounts to $23.38, so, kindly let us have your check for $448.38.

How did you get along with Rex when you were over at the factory about three weeks ago? We have not as yet heard from them.

Yours very truly,

KEYSTONE DRILLER COMPANY,
By:

FWR:T *Credit Manager.*

THE PEOPLES NATIONAL BANK,
Lakewood, N. J.

Received for Collection from Keystone Driller Co.
Date Received 3/8 Your Reference No. or Date.....

Payer	Date	Time Due	Amount	Pro.	Payee
B. R. Clutter	Attached	3/14	425.—	X	Above

Less exchange $.....

We report on above collection as per item checked (√)

—— We credit your account
√ We enclose check
—— We return Unpaid for reason checked below

√ Party will remit direct

No. 8099

DEFENDANT'S EXHIBIT NO. 103.

Keystone Driller Co. Letter, dated Jan. 15, 1927, to B. R. Clutter.

(Filed May 16, 1931.)

[Cases Nos. 964 and 965]

Jan. 15, 1927.

Mr. B. R. Clutter
Edgewood Court
Lakewood, N. J.

Dear Sir:

In acconection with the arrangement about credit on the first machine purchased from us in connection with the patent litigation, would say that we have re-

ceived from Beaver Falls information that they have canceled four of your notes due respectively in September, October, November and December of 1925, the amount in all being $1700. We are now handing you these notes herewith properly canceled.

It is the writer's understanding that, in case of the successful issue of our, litigation, there will be a further credit. This, of course, cannot be given until the cases have been decided.

Yours very truly,

KEYSTONE DRILLER COMPANY

By:

Credit Manager.

FWR:T
C/C. T. Smith

1503

1303

Marked for identification
Plaintiff's Exhibit
In Equity 964 + 965

Plaintiff's ex
Helen R Gee

H. R. CLUTTER, PRES.
J. W. MATTHEWS, SECTY. & TREAS.
TELEPHONE, LAKEWOOD 701
TELEGRAPH CONNECTION, LAKEWOOD, N. J.

CLUTTER CONTRACTING CO.

NOTARY PUBLIC OF NEW JERSEY
My Commission expires May 7, 1935

GENERAL CONTRACTORS

LAKEWOOD, N. J.

104

Jan 9 — 28

Atlantic ~~Keystone Boulder Co~~

Mr Rex Downey

Dear friend Rex as I have not heard from you for some time and I am in need of funds and I am sure that you are the one that can help me out as you remember that you said if you had to take De Loma Machine You would allow me half the amount that was to be allowed on the first Machine and never will the same amount of money be of more benefit to me than right now for I am out of work

Thirgau

This may refer to understanding that "if K.W. should re-possess both machines, and hence could not fulfill Par 2 of contract by a machine-credit, they would reduce the amount of Par 2 by ½ and pay (if and when due) in cash. At least this was writer's intention and recollection of a precinct (verbal) in regard to the point.

R.W. Dec 3rd 1928.

1307

1307

B. R. CLUTTER, PRES.
J. W. MATTHEWS, SECTY. & TREAS.

TELEPHONE, LAKEWOOD 791
TELEGRAPH CONNECTIONS, LAKEWOOD, N. J.

"THE EARTH MOVES AT OUR COMMAND"
BECAUSE WE USE P. & H. GASOLINE SHOVELS

MAY 16 1931

CLUTTER CONTRACTING CO.

GENERAL CONTRACTORS

LAKEWOOD, N. J.

- and out of funds a heck of a predicament but cold facts just the same it seems that every way that I turn my efforts are in vain.

Please let me hear from you by return mail Rex for I never needed help any worse than I do now.

Wishing you a Happy and Prosperous New year

I am Yours Truly

B R Clutter

DEFENDANT'S EXHIBIT NO. 105.

Keystone Driller Co. Letter, dated January 18, 1928, to B. R. Clutter.

(Filed May 16, 1931.)

[Cases Nos. 964 and 965]

January 18, 1928.

Mr. B. R. Clutter,
Lakewood, N. J.

Dear Burn:

We have your letter of January 9th, and we are very glad to hear from you, although we do not know that there is anything we can do about the matter of your shortage of funds.

Perhaps writer's memory is not good but he does not remember about saying that "if we had to take the second machine we would then or for that reason allow half the amount that was to be allowed on the first machine." We have not forgotten the contract we made with you, and as you know we have been extending the time within which the contingency may occur which would render the second installment or portion of the purchase price of your first machine due.

Of course the taking back of the first machine was not contemplated at the time of making our deal, and we feel that the second installment if and when it may become due you, since it would now be payable in cash instead of credit should be at least reduced by whatever loss we had on your first machine. Writer is not certain but that it should also be reduced by any loss suffered by the Company on your second machine, but we will leave that point open.

Another confusing circumstance is that you owe us some $450.00 for parts, and as writer remembers it we made you a proper clean up credit to cover what was due toward adjustment of breakages, etc. Mr. Smith is very likely to hold out for covering this parts bill out of your second installment if and when it becomes due, as this is an unwarranted loss in addition to whatever loss was suffered in the depreciation of the machines beyond the figure at which they would re-sell.

About all we can say at this time is that we certainly will fulfill the deal we made with you, taking certain credits for plain credits due us from you, amount not now determined, but that writer does not feel that we should exceed the terms of the contract by making any payment

now, before same is due according to the deal. We are very sorry not to be able to do anymore about it at this time, and beg to remain

Yours truly,

RRD.FB KEYSTONE DRILLER COMPANY.

DEFENDANT'S EXHIBIT NO. 106.
Letter, dated Feb. 6, 1928, from B. R. Clutter to Rex Downie.

(Filed May 16, 1931.)

[Cases Nos. 964 and 965]

Lakewood, N. J.

Feb. 6, 1928

Mr. Rex Downie

Dear Friend Rex in reply to yours of recent date and am at a loss to know why you don't remember the ~~reason~~ amount that you agreed to pay me if you had to take the second machine back as this was your own proposition.

Now Rex the fact of the matter is that Bankrupt proceedings is pressing me very close right at the present time and this would be a nasty claim to try to explain in the Supreme Court which of course bankrupt proceedings comes under it would get a lot of publicity that we do not want in connection with this case. I am willing to make any concession that is within reason to get the thing cleaned up before anything happens which is likely very soon. Can you come out and see what we can do.

Very Truly Yours,

B. R. CLUTTER.

DEFENDANT'S EXHIBIT NO. 107.

Keystone Driller Co. Letter, dated Feb. 16, 1928, to Burn R. Clutter.

(Filed May 16, 1931.)

[Cases Nos. 964 and 965]

February 16, 1928.

Mr. Burn R. Clutter,
Lakewood, N. J.

Dear Burn:

Upon receipt of your letter of February 6th we wrote to Mr. Elmire to see whether he remembers the deal the same way that the writer does. We now have reply from Mr. Elmire in which he says that as he remembers it the understanding was that if we had to take back the first machine, *and if* any one of the three things mentioned in the third paragraph of our memorandum should occur within the time limit, *then* a cash payment of something less than $1000.00 was to become due. This agrees with the writer's recollection, namely, that if the machines had to be taken back, and the contingency of payment should occur, then we were to pay in cash half of the amount which would have been due as a credit against machine price, (which credit was determined to be $1904.00, making the contingent cash payment $952.00).

So that is the status of our deal at the present time; —no one of the three things mentioned in the memorandum has happened as yet. Now however,—although you must not think that we make any offer on account of the suggested awkwardness of an examination of your accounts in any bankruptcy proceedings, for you have no actual property or credit in this contract at the present time, and therefore there is nothing in this to be listed among your assets.—we now make this offer in modification of the original deal, or rather in substitution for the original deal in view of the uncontemplated development which has occurred, namely that we have taken back your machine;—

The contingent credit of one fourth of the purchase price of your first machine, viz $1904.00 is displaced in the deal by a contingent cash credit of $952.00. And the verbal extensions of the time within which the contingencies named in paragraph three may occur with effect are hereby confirmed and further extended to the end of the year 1928; although none of these contingencies has oc-

curred at date of this writing, we now offer in consideration of the above to now pay you half of the contingent cash credit, viz $476.00, leaving the second half of it, $476.00 cash contingent upon the development of the ditcher situation.

We enclose check covering amount as offered above, which please return in case the offer is not accepted.

Now this is the best we can do, Burn, and we certainly hope that the cash will help you out in your present circumstances.

RRD.FB Yours truly,

CC H. H. Elmire. KEYSTONE DRILLER COMPANY.

DEFENDANT'S EXHIBIT NO. 108.

Check in the sum of $476.00 dated Feb. 16, 1928, from Keystone Driller Co. to B. R. Clutter.

(Filed May 16, 1931.)

[Cases Nos. 964 and 965]

No. B 3503

KEYSTONE DRILLER COMPANY

Beaver Falls, Pa., Feb. 16, 1928.

Pay to the order of B. R. Clutter $476.00 Keystone Driller Co. $476 and 00 cts. Dollars

KEYSTONE DRILLER COMPANY
CHAS. THEO. SMITH,
Treasurer.

To The Federal Title & Trust Co.
60-424 Beaver Falls, Pa.

Perforated: Paid 2-23-28 F T Co

Endorsements on back:

B. R. Clutter
Mrs. B. R. Clutter

(Lakewood, N. J. Bank stamp—dated Feb. 18, 1928.)

(Pay to the order of any bank or banker or thru the Pittsburgh Clearing House. Prior endorsements guaranteed. Pittsburgh Branch Federal Reserve Bank of Cleveland. 4 8-30 D 8-30 Feb. 21, 1928.)

DEFENDANT'S EXHIBIT NO. 109.

Letter, dated 11/15/1928, from B. R. Clutter to Rex Downie.

(Filed May 16, 1931.)

[Cases Nos. 964 and 965]

Lakewood, N. J.

11-15-1928.

Mr. Rex Downie,
c/o Keystone Driller Co.,
Beaver Falls, Pa.

Dear Friend Rex:

Glad that I did not have to call on you for so long a time for the balance of the money on the little transaction of the Shovel, but now I need the money very badly and you can do me no greater favor than to mail me a check for the balance to 17 Edgewood Court, Lakewood, N. J.

Hoping that you have had a successful year and with best wishes for the success of yourself and Company, I am

Yours truly,

B. R. CLUTTER.

DEFENDANT'S EXHIBIT NO. 110.

Letter, dated Nov. 28, 1928, from B. R. Clutter to Rex Downie.

(Filed May 16, 1931.)

[Cases Nos. 964 and 965]

CLUTTER CONTRACTING CO.
General Contractors

Lakewood, N. J., Nov. 28, 1928.

Mr. Rex Downie,
c/o Keystone Driller Co.,
Beaver Falls, Pa.

Dear friend Rex:

Received your letter of the 23rd and was very glad to hear from you but sorry that you have got the deal in

regard to the invention of the drop bottom on the ditcher or pull scoop so confused in your own mind as to what the arrangement was at the time you decided you would have to take the machine back which was done.

Now I think I can refresh your memory on this proposition in a way that you will realize and understand that I am absolutely right and justly entitled to this claim.

First in regard to the parts account. This account you thought was large however you had not taken into consideration the additional scoops that had been ordered on this particular machine and charged to me but never delivered. This together with credits on the large amount of parts that I was compelled to buy and you agreed to allow, practically eliminated the charge on the Parts account.

Now at the time that you thought that the machine would have to be taken back I brought the question squarely up to you as to whether that meant that I would have to loose the full amount that you had agreed to allow me on the deal in case you decided to take the shovel, and your proposition was that we would then make it a cash consideration and each share alike in the loss. This of course was in case the patent proved of value which was to be decided one way or another at the end of another year between ourselves and that the cash that I would receive if any would be $1904.00 which was half the amt of the total allowance that I was to have on the shovel. As to me indicating satisfaction in excepting your check for $476.00 it was not my intention by any means to do this but this agreement was you might say entirely on our honor and knowing you as I do I felt that you had just got the thing confused in your own mind and that I would see you in a short time and rehurse the proposition in a way that it would refresh your memory as to the arrangement we made, and that the wrong would be immediately righted. In fact there has been no question in my mind as to your honesty or sincerity to carry this deal right out to the letter but just the simple fact that you have got the thing confused in your own mind.

Now as to the figures of $952.00 I am at a loss to know unless you forgot how many times you was to cut the thing in two, the amt that is still due is $1428.00 and now I feel that is up to you to see that it is carried out as per our mutual agreement. This is certainly not ex-

ceeding the spirit of the deal in any manner but simply carrying out the true spirit of the deal.

Now Rex you stated in your letter that you and Elmire might run down and have another shore dinner and nothing would be more pleasing me than to see you come not only for dinner but to spend a few days with us and we certainly will do the best we can to make you enjoy yourselves.

Let me hear from you right away Rex please also tell me when you are coming out.

With Best Regards,

B. R. CLUTTER.

DEFENDANT'S EXHIBIT NO. 111.

Letter, dated 11[12]/13/28, from B. R. Clutter to Rex Downie.

(Filed May 16, 1931.)

[Cases Nos. 964 and 965]

CLUTTER CONTRACTING CO.
GENERAL CONTRACTORS
Lakewood, N. J.

11/13/28

Mr. Rex Downie c/o Keystone Driller Co.

Dear Rex Reed your letter of Dec. 4th and contents of same noted. There is absolutely no misunderstanding on my part. This proposition was thoroughly thrashed out adjusted and readjusted the credit of the one fourth of the cost of the machine was brought up and I explained to you that that did not mean anything to me that it was only handing me something with one hand and taking it away with the other. I explained

that a deal of this kind would be very unsatisfactory to me. It was then agreed to forget the credit and each share equal in the loss or the $3808.00 that would have been due as a credit on the machine which would leave a balance of $1904.00 to be paid to me in cash if the patent proved of value these figures were expressed in round numbers by you and myself so how could there have been any misunderstanding. Now Rex if you do not consider that the patent is of this much value to you just transfer it over to me and I will gladly receipt the claim if it is worth more than that to you pay the claim. The fact of the matter is I am the original inventor. This I know and it was also admitted by you in your voluntary act of coming to me for a settlement without any demand or request. I believed that you was trying to make amends for the wrong that that had been done me. A settlement was arrived at later you decided to take the machine. The settlement was readjusted and agreed upon again by arranging for a cash consideration of half the amt that I should have got in credit now apparently you want to settle for ¼ of the consideration that we agreed upon. Now Rex there is no use of quibbling over this proposition any farther. Either you do or you don't intend to pay the claim, and I want you to take a definite stand one way or the other, one that cannot possibly be misconstrued as meaning any thing except just what you intend to do.

You can tell Mr. Smith for me that I am not in any way indebted to your company. Please let me hear from you by return mail.

Very truly yours,

B. R. CLUTTER.

DEFENDANT'S EXHIBIT NO. 112.

Letter, dated April 20, 1929, from Geo. E. Wagner to J. V. Downie, c/o Keystone Driller Co., and Envelope.

(Filed May 16, 1931.)

[Cases Nos. 964 and 965]

---

rec'd Apr 22nd 29.
R.D.

Akron, Ohio,
April 20, 1929.

Mr. J. V. Downie,
Keystone Driller Company,
Beaver Falls, Pennsylvania.

Dear Sir:

Your separate letters of April 12, 1929, addressed to us have been received and the contents thereof noted.

The statements made in your letters as to an alleged proposition by us to suppress or conceal a report of any evidence concerning your ditcher litigation in exchange for something of value are entirely unfounded and unwarranted by any matters which we presented at the two informal interviews we had with you.

Both of these interviews, the second of which was requested by you, were for the purpose of discussing and perhaps settling the matter of alleged infringement of your patents on ditchers by our licensee, The Star Drilling Machine Company, Akron, Ohio, who has been notified of such alleged infringement by your attorney, Mr. Siggers. The receipt of such notice by Star was somewhat a surprise to us in view of statements made by your Mr. Rex Downie to both of us at various times, that "if all ditchers were as clear of ours as yours are, there would be no suits."

You did mention some matters pertaining to the use of a ditcher at Joplin, Missouri, which might have some bearing on your ditcher litigation and in connection therewith you also mentioned one Burn Clutter who is in no way connected with us or under our control. From your statements at these interviews concerning your dealings with Burn Clutter, it seems to us that it is yourselves who have actually attempted to suppress evidence which may be of serious consequence in your ditcher litigation.

We have no knowledge of the dickerings you say Burn Clutter has had with you excepting what you may

have said concerning this at our meetings with you, nor did we make any proposition to you to induce Burn Clutter to conceal or suppress any knowledge he may have regarding the matter.

Yours very truly,

GEO. E. WAGNER.

(Envelope)

After 5 days, return to

GEO. E. WAGNER
~~The Star Drilling Machine Co.,~~
475 Washington St.,
Akron, Ohio.

Registered #17033
Return Receipt Demanded

Return Receipt Requested

Mr. J. V. Downie
c/o Keystone Driller Co.
Beaver Falls,
Pa.

2 cent stamped envelope with one 1 cent, one 2 cent and one 15 cent postage stamp affixed and cancelled.

(Beaver Falls, Pa. Apr. 22 1929 Registered)
(Akron (Goodrich St. Sta.) Ohio Apr. 20, 1929 Registered)

1319

Filed this

FILED
MAY 16 1931
At ..... O'clock ..... M.
F. J. DENZLER, Clerk,
U. S. District Court, N. D. O.

Defendant's Exhibit
No. 113

STATEMENT

Date April 16, 1925

To whom it may concern;

I, Burn R. Clutter, now residing in Lakewood, N. J. was employed by the Keystone Driller Co. of Beaver Falls, Penna., from 1914 until sometime in 1919. My work with said firm was that of salesman and demonstrator, and in the course of this work I became skilled in the operation of the Keystone excavator.

In December of 1919 or January of 1920, after I had left the employ of the said Keystone Driller Co., and while I was employed by the Orange Mining Co of Joplin, Mo. in the capacity of Keystone excavator operator I assisted in the construction of certain two drop-bottom ditcher scoops.

I operated the excavator on the excavation for the basement of the Joplin Supply Company building on Third Street, Joplin, on which job the drop bottom ditcher was tried.

The device consisted of (1) a boom pivotally mounted for hoisting and swinging, (2) an I-beam ditcher stick pivotally attached to the outer end of the boom at a point on the stick about fifteen inches below its upper end, (3) a pair of sheave stands pivotally attached to the upper surface of the boom at a point near the outer end of it and carrying a sheave, (4) a hoisting cable extending from the machine and engaging said sheave, (5) a pair of links pivotally connecting the pin of the hoisting sheave with the upper end of the ditcher stick, (6) a scoop rigidly attached to the lower end of the stick having (7) a falling bottom pivoted to the sides of the scoop at a point near the open end of the latter and near

the lower edge of the sides, and (5) a hauling line extending from the machine to the scoop for drawing it toward the machine.

Elements (1) to (5) inclusive and element (5), as listed above, were precisely the regular Keystone ditcher parts as manufactured by the Keystone Driller Co., under the L. P. Clutter patent No. 1,317,431. The new contrivance consisted in rigidly fastening a scoop body, made after the pattern of the body of the Keystone skimmer scoop, to the lower end of the stick, providing for discharge by the use of a pivoted bottom.

Two scoops were made in order that one might be always available as a standby to insure against the delay of the job which might have resulted from the necessity for repair or revision.

Both scoops were in about the same stage of development when use as ditchers was given up. Both scoops were dismantled shortly after having been used on the Joplin Supply Co. job and were converted into skimmer scoops.

Experimentation was abandoned; and so far as I was concerned this was because of the extreme care required to make the device as a whole operative, especially the latching arrangement; and because I did not conceive the advantage of the dumping bottom to be of sufficient practical worth to justify the expense of the re-design and further experimentation which would have been necessary in my opinion to make the device commercially useful.

Burnard R. Clutter

Subscribed and sworn to before me this 16th day of April 1925.

John L. Burdett

DEFENDANT'S EXHIBIT NO. 114.

Form of Agreement between Burn R. Clutter and The Keystone Driller Co.

(Filed May 16, 1931.)

[Cases Nos. 964 and 965]

PRINTER'S NOTE:

This Exhibit, being identical with Defendant's Exhibit No. 98, printed hereinbefore, has been omitted to avoid duplication. (See Page 1298 of Exhibits, Vol. IV.)

DEFENDANT'S EXHIBIT NO. 115

U. S. Patent No. 1,249,805, Dec. 11, 1917

To G. A. Morison, S. R. W. M. Bager & O. F. Kaeser

Dipper

(Filed May 16, 1931)

[Cases Nos. 964 and 965]

PRINTER'S NOTE:

This patent having been reproduced herein before as Defendant's Exhibit No. 80, the same is omitted at this point to avoid duplication. (See Page 1291 of Exhibits, Vol. IV.)

DEFENDANT'S EXHIBIT NO. 129.

Affidavit of Robert Rex Downie, verified Dec. 30, 1931.

(Filed as a Pleading in Case No. 964 on Dec. 31, 1930. See page 82 of Vol. I of this Record.)

(Filed as an Exhibit May 16, 1931.)

[Cases Nos. 964 and 965]

AFFIDAVIT OF ROBERT REX DOWNIE.

STATE OF OHIO,
COUNTY OF CUYAHOGA, SS.

ROBERT REX DOWNIE, being duly sworn, deposes and says:

I am the inventor of patent No. 1,511,114 and I am an officer of the Plaintiff company.

I invented the excavating machine disclosed in that patent prior to learning anything about the machine or the experiment at Joplin. News came to me of the Joplin machine and experiment, however, before I filed my patent application from which the said patent issued. As soon as I learned of the Joplin machine and experiment, I investigated the same and reported what I learned about the machine and the experiment to Mr. E. G. Siggers of Washington, D. C. who was at that time our patent attorney, and who is now deceased. I also reported to him my own work on the machine of the patent. Mr. Siggers reported that the Joplin experiment was an abandoned experiment. He also advised that the patent application should be filed in my name which was done at his advice. He prepared the application for the patent, advising me that it did not embody any invention in the Joplin machine and accordingly I signed the same and it was filed.

I have examined the machine illustrated in Defendant's Exhibit 26 and have read the testimony given in connection therewith by witnesses called for the Defendant. I find that none of the inventions in the Downie patent, No. 1,511,114, are embodied in this machine. I find that the machine illustrated in Exhibit 26 is incapable of performing the important functions of the patented machine or of operating as the patented machine does. After the infringement of this patent by The Byers Company, I made further investigations regarding the Joplin experiment and the Joplin machine for the purpose of submitting this information to Mr. Philip E. Siggers and to Mr. Janney of the patent law firm of Emery, Booth, Janney &

Varney. Among those whom I interviewed was Mr. Burn Clutter who had been associated with the Joplin machine and the Joplin experiment. I had known Mr. Clutter for a number of years. He had at one time been employed by our company and we had had considerable dealings with him and were familiar with his character and disposition. I was interested that the facts which he reported to me about the Joplin experiment and the Joplin work and which I reported to my patent lawyers should be preserved, as I did not want him later to change his story. It also occurred to me that there might be some patentable invention about the ditcher scoops which were employed on the Joplin machine and whose history after they were removed from the machine I was unfamiliar with. I knew the Joplin machine had been dismantled and abandoned, but I did not know what had become of the scoops that were used upon it.

At that time Mr. Clutter wanted to buy an excavator and did not have the money to buy it. Accordingly, I made him a proposition to waive the final payments on such a machine if he would assign to the Keystone Driller Company a quit claim to all right, title and interest he had in the excavator scoops and furnish me an affidavit containing the information which he had given me regarding the Joplin machine and the Joplin work in order that I would be protected as against what I reported to the patent lawyers. Mr. Clutter told me and stated in his affidavit among other things, as follows:

> "Experimentation was abandoned; and so far as I was concerned this was because of the extreme care required to make the device as a whole operative especially the latching arrangement; and because I did not conceive the advantage of the dumping bottom to be of sufficient practical worth to justify the expense of the re-design and further experimentation which would have been necessary in my opinion to make the device commercially useful."

I did not ask Mr. Clutter to sign the affidavit until he had fully considered the same and read it over. What he told me about the abandonment of the machine and experiment had been also told me by others who had seen or worked with the Joplin machine and experiment. The proposed deal by us is set forth in the Memorandum Agreement marked "Appendix A" and attached to the brief filed herewith, though this Memorandum was never signed by the parties. There was no other Memorandum

of agreement oral or written between Mr. Clutter and me, or the Keystone Driller Company regarding this matter.

My purpose in making the waiver of the payments contingent upon the success of the patent litigation was that if the patents on the excavator failed, even a quit claim upon any invention in the scoops would be of little or no value to us.

I then submitted the information I had gathered from Mr. Clutter and others regarding the Joplin machine to Mr. Philip E. Siggers and to Mr. Janney. Both advised that in their opinion the Joplin experiment was an abandoned experiment and the Joplin machine did not anticipate or negative the novelty of the patent, No. 1,511,114. Later the same questions were submitted to F. O. Richey of Richey & Watts and he rendered the same opinion. After receiving the opinions of Mr. Janney and Mr. Philip E. Siggers, the suit was instituted against The Byers Company and was decided in our favor in January, 1929.

In the meantime Mr. Clutter had begun to default on his payments and it was necessary for the company to repossess the machine. It was then, and not until then, that Mr. Clutter began to intimate that he understood that one of the considerations for the waiving of these payments was his concealing or suppressing the testimony, although I had made no such agreement with Mr. Clutter. Our reply to him was that he was at liberty to tell any and everybody he pleased about the Joplin machine and Joplin experiment, as we had fully investigated the same and submitted it to our attorneys who had reported that it was an abandoned experiment and did not anticipate anyhow. We also told Mr. Clutter what he well knew that the Joplin machine and Joplin experiment were known to a number of people. Then we went ahead and repossessed the machines. We heard little more from Mr. Clutter until after Judge Jones decided the Byers case in our favor and the patents became valuable. Then Mr. Clutter again approached us in such a manner and with such words as to lead us to believe that he was proposing that for compensation from us he would remain silent or conceal what he knew about the Joplin work and machine. We were also approached by his brother, Mr. B. C. Clutter, and by Mr. George E. Wagner, a friend of Mr. Clutter, in such a manner and with such words as to lead us to believe that they were either acting for themselves or for Mr. Burn Clutter in making similar proposals to us. In consequence we wrote to Mr. B. C.

Clutter the letter attached to the brief filed herewith and marked "Appendix B" and to Mr. Wagner the letter attached to the brief and marked "Appendix C." We received a letter from Mr. Wagner written on behalf of himself and Mr. B. C. Clutter, denying that they had in mind making any proposal to us to suppress or conceal any evidence for a compensation.

We heard no more of this matter until the Defendants in this case served notice of the taking of the testimony of Mr. Burn Clutter.

I have read the depositions given by Mr. Clutter in this case. I attended the first deposition. During a recess in the first deposition Mr. Clutter asked for a conference with me after the termination of the deposition. This conference was never had and later he returned and gave the second deposition. I have read over the second deposition, particularly the reports he has made of the interviews he had with me and I deny that I either at the interviews which he reported, or at any other time, made him any offer or made any request that he either suppress or conceal any evidence regarding the Joplin machine or the Joplin experiment. Manifestly, it would have been absurd for me to make such an offer had I been disposed to do so, which I was not, because all the evidence which Mr. Clutter had about either the Joplin machine or experiment was known to a half-dozen or more other people, most of whom were not in our employ and some of whom had been released from our employ since the experiment was made.

ROBERT REX DOWNIE.

Subscribed and Sworn to before me this 30th day of December, 1930.

FLORENCE KOFSKY,
Notary Public.

(Notarial Seal)

FLORENCE KOFSKY